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Federal Register

Tuesday
March 4, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, St. Louis, MO, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

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Personnel Management Office

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Fisheries
National Oceanic and Atmospheric Administration

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Immigration and Naturalization Service

Medicaid
Health Care Financing Administration

Old-Age, Survivors, and Disability Insurance
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Selected Subjects

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; 9 am.
WHERE: Room 1612, Federal Building, 1520 Market Street, St. Louis, MO.
CALL: Dolores O'Guin, St. Louis Federal Information Center, 314-425-4109, for reservations.

WASHINGTON, DC

WHEN: March 20; 9 am and 1 pm. (identical sessions)
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW, Washington, DC
CALL: Ruth Reedy, 202-523-5239, for reservations.

DENVER, CO

WHEN: March 24; 9 am.
WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.
CALL: Elizabeth Stout, Denver Federal Information Center, 303-236-7181, for reservations.

DALLAS, TX

WHEN: April 23; 1:30 pm.
WHERE: Room 7A23, Earl Cabell Federal Building, 1100 Commerce St Dallas, TX.
CALL: local numbers:

Ft. Worth	817-334-3624
Dallas	214-767-8585
Houston	713-229-2552
Austin	512-472-5494
San Antonio	512-224-4471

for reservations.

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Presidential Documents

Title 3—

The President

Proclamation 5445 of February 28, 1986

Red Cross Month, 1986

By the President of the United States of America

A Proclamation

In cities, towns, and rural communities across our Nation, Americans have turned time and again to the American Red Cross for help. And they have not been disappointed. Acting as a conduit for the generous outpouring of time, money, and voluntarily donated blood, the Red Cross has been there whenever needed throughout the past year.

During 1985, an unprecedented series of violent storms, including hurricanes and tornadoes, smashed across our Nation. The Red Cross responded by providing immediate emergency assistance to more than four million Americans displaced by these storms. In small towns and large cities, the Red Cross responded on more than 60,000 occasions to Americans in need, and to families whose homes were damaged or destroyed by fire, flood, or storm. Due to the unprecedented demand for assistance to disaster victims here in our Nation, the funds available to the Red Cross for such vital work have been totally depleted, and yet that magnificent organization continues to provide emergency assistance to individuals and families in need all across America.

The American Red Cross also played an active role as part of an international effort in the harrowing drama of the American travelers hijacked in Beirut, relaying messages from the prisoners to families back home and insuring their safe conduct out of Lebanon. Our Red Cross quickly and efficiently mobilized support for the victims of the terrible Mexico City earthquake and the Colombian volcano eruption, in conjunction with the International Red Cross, while continuing the vital work of feeding and providing medical care for millions of victims of drought and famine in Africa.

As the collector, processor, and distributor of more than half of the Nation's voluntarily donated blood, the American Red Cross took the lead in implementing HTLV–III antibody testing, adding significantly to the effectiveness of recruitment and screening practices already in effect that protect more than one-and-a-half million recipients of blood and blood products from exposure to the deadly AIDS virus.

All of this was accomplished without the Red Cross cutting back on any of its continuing heavy responsibilities. Millions of our fellow citizens were taught lifesaving techniques in CPR (cardio-pulmonary resuscitation), first aid, water safety, and small craft operation. More than half-a-million emergency messages were relayed worldwide between members of our Armed Forces and their loved ones back home. Nearly six million individuals were served at Red Cross blood pressure screenings and aid stations.

Providing the most efficient and effective help in times of emergency and disaster is an enormous task. But since its founding by Clara Barton in 1881 the American Red Cross has met the challenge. It has been able to do so only because millions of Americans have volunteered their money, time, and their hearts so that those services will always be available.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, and Honorary Chairman of the American National Red Cross, do hereby designate March 1986 as Red Cross Month, and I urge all Americans to give generous support to the work of the American Red Cross and to their local Red Cross chapters.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-4792
Filed 2-28-86; 4:00 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12554 of February 28, 1986

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 162a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to Section 126a(2) of such Act and extended by Executive Orders No. 12193, 12295, 12351, 12409, 12463, and 12506, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of the United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1987.

Ronald Reagan

THE WHITE HOUSE,
February 28, 1986.

[FR Doc. 86-4791
Filed 2-28-86; 3:59 pm]
Billing code 3195-01-M

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act; Exemptions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its proposed regulations providing modified, clarified criteria for determining a Federal employee's exemption status under the Fair Labor Standards Act (FLSA). These regulations were first published as final rules at 48 FR 49494 on October 25, 1983, and were involved in judicial and Congressional action, which delayed implementation until July 3, 1985. The exemption regulations were republished at 50 FR 35529 on August 30, 1985, for readers' convenience, to reiterate that a 120-day implementation period started on July 3, 1985, and to allow for additional comments which may not have been previously considered. The modifications are intended to facilitate FLSA administration in the Federal sector and to alleviate the discrepancy between OPM's exemption criteria and the exemption criteria that are applicable to employees in the private sector. They also provide criteria for applying the FLSA to employees on temporary duty and to employees who travel to and from foreign areas.

EFFECTIVE DATE: April 3, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Clogston, (202) 632-5691.

SUPPLEMENTARY INFORMATION:

Background

Regulations published as final rules on October 25, 1983, at 48 FR 49462, *et seq.*, concerning reduction-in-force (RIF), performance management, and the application of the Fair Labor Standards Act (FLSA) to the Federal work force became effective on July 3, 1985. They were republished as a proposed regulation at 50 FR 35529 on August 30, 1985, to allow interested parties the opportunity to consider substantive changes to parts of the regulations and to comment on the proposed implementation schedule. Comments have been received and considered, and are addressed later.

As stated in the August 30, 1985, republication, the regulations have been in effect since July 3, 1985. We again provided a 120-day period starting July 3, 1985, to permit agencies time to integrate the changes into their current operational structure. This meant that with the 120-day delay, the full and final effective date was the first pay period on or after November 1, 1985.

We also provided the first 90 days of this period, until October 1, 1985, for agency headquarters to submit requests for an OPM advisory opinion on exceptions to the presumption of exemption. On August 2, 1985, a memorandum was provided to Directors of Personnel notifying them that these regulations are now effective, providing the 120-day delay from July 3, 1985, and outlining procedures for requesting exceptions to the presumption of exemption.

Under these new regulations, it is assumed that if a position is properly classified at the GS–11 or above level (or equivalent level in other white collar salary systems), the position would properly be exempt under the provisions of the FLSA. However, we do recognize that there could exist rare occasions when there might be an exception to this presumption. For those unusual situations when an agency feels that an exception might exist, we proposed a regulatory procedure for requesting a waiver (see § 551.207). We proposed that these requests be made as soon as possible within the first 90 days of the 120-day implementation period so that we can provide our advisory opinion to the agency headquarters before the expiration of the 120-day implementation period. We have acted on all agency headquarters requests received by October 1, 1985.

Discussion of Comments

Most of the comments received in response to the proposed regulations republished at 50 FR 35529 on August 30, 1985, are similar to those received when these regulations were previously published. We have already addressed these issues in previous **Federal Register** notices; and we feel that our explanation is still valid. However, in order to be totally responsive to all concerns, we will again summarize those comments along with our explanation.

Two unions commented that OPM does not have the authority to change FLSA regulations, or that OPM's changes are not consistent with FLSA regulations or Federal case law. OPM was given the authority to administer the FLSA so that it could reconcile differences between the FLSA and existing Federal pay and classification statutes. This responsibility necessarily carries with it the authority to regulate. Indeed, it is the purpose of OPM's FLSA regulations to provide a framework for FLSA administration within the Federal sector. A direct application of Department of Labor (DOL) regulations to Federal employees is not feasible because DOL regulations do not take into account existing, sometimes conflicting, pay and classification statutes.

Several labor organizations objected to the use of the classification system for determining presumed exemption. One of those organizations recommended a cut-off salary of $21,798 for determining presumed exemption. OPM believes that defining the FLSA minimum grade levels for exemption, and the cutoff points for applying the "short test" in terms of the classification system makes more sense than using only absolute dollar figures. Otherwise, such routine actions as within-grade increases and yearly comparability increases could affect an employee's examption status. Furthermore, as we repeatedly have emphasized, the position classification system is a *job evaluation* process which is a more logical system for defining exemption for Federal employees than gross weekly salary.

An agency and one union objected to setting the presumed exemption grade level at GS–11. The agency recommended that the grade level at

which exemption is presumed should be lowered. Since the cutoff in the General Schedule for time and a half is GS–10, we do not believe that exemptions should be presumed at levels in the General Schedule where exemption begins to become problematic. It must be noted that title 5 of the U.S. Code divides the General Schedule into two distinct categories. Those employees paid at less than the rate of GS–10, step 1, are entitled to time-and-a-half of their basic rate for overtime work. Those employees paid at the GS–10, step 1, rate or above are paid at the overtime rate of GS–10, step 1, regardless of grade level. In effect, title 5 provides a statutory division point above which employees are entitled to overtime compensation, but not to time-and-a-half. To determine that employees paid above the statutory break point are nonexempt creates pay distortions which frustrate the distinctions made by the General Schedule. Consequently, OPM believes that a presumption that employees above GS–10 are exempt is an appropriate reconciliation of title 5 and the FLSA and gives the fullest effect to both statutes while preserving the protective features of the FLSA for the segment of the workforce it was designed to protect.

The union further argues that using GS–11 for exemption determination purposes misallocates the burden of proof to salary levels rather than job duties. We must emphasize the fact that this presumption would be made only after the agency fulfills the burden of proper classification of a position at a high grade level pursuant to a formal evaluation procedure. OPM in its dual role as administrator of the FLSA and the position classification system believes that proper classification at these grade levels justifies the presumption of exemption. OPM still recognizes that certain positions may not be exempt at these higher grade levels and has provided a regulatory procedure for exceptions. Also, employees still retain the right to appeal their individual determination to the appropriate OPM office.

In addition to the above, we received the following comments that have not been previously addressed:

One agency recommends that 5 CFR 551.209 dealing with the application of the executive, administrative, and professional exemption criteria for temporary duty be rewritten for clarification purposes. We will address this point in future changes as appropriate.

One union argues that supervisory determinations outlined in 5 CFR 551.204(a) of the proposed regulations concerning executive exemptions are not proper in that the "Supervisory Grade Evaluation Guide for General Schedule employees and Job Grading Standard for Supervisors for Wage Grade employees are contained in the Federal Personnel manual and are not published subject to the provision of the Administrative Procedures Act (APA)." Since the Supervisory Grade Evaluation Guide (SGEG) was already in effect prior to the application of the APA's requirements regarding agency practices and procedures adopted by OPM (see 5 U.S.C. 1103(b), 1105), there is no need for it to be republished in accordance with the APA (see section 902(a), Pub. L. 95–454).

One agency stated that it would like to see clearer criteria for administrative and professional exemptions and coverage of trainee positions (§§ 551.205 and 551.206 respectively). In addition, the agency believes it would be helpful to have guidelines relating to occupational series. The regulations are expanded by FPM material. Therefore, there is no need for additional clarification in these regulations. Exemption criteria are applied to all positions including trainee positions. If the exemption criteria apply, the position is exempted. Exemption determinations cannot be made on the basis of occupational series, but must be made on the basis of actual duties performed.

One union stated that the proposed regulations do not protect the narrow construction of exemptions intended under FLSA. To the contrary, the proposed regulations clearly affirm the intended FLSA policy.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it provides procedures for applying the exemption criteria of the Fair Labor Standards Act to Federal employees.

List of Subjects in 5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is adopting its proposed rules as published on August 30, 1985 (50 FR 35529), as final rules without change to read as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

1. The authority for Part 551 is revised to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93–259 enacted April 8, 1974, 88 Stat. 55; 29 USC 204f.

2. Paragraph (h) section 551.102 continues to read as follows:

§ 551.102 Definitions.

* * * * *

(h) "Exempt area" means any foreign country, or any territory within the jurisdiction of the United States other than the following locations:

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The Virgin Islands;

(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Wake Island;

(9) Eniwetok Atoll;

(10) Kwajalein Atoll; and

(11) Johnston Island.

2. Subpart B of Part 551 continues to read with the exception of Section 551.207, which is revised, as follows:

Subpart B—Exemptions

Sec.

Subpart B—Exemptions

§ 551.201 Agency authority.

The employing agency shall exempt from the overtime provisions of the Act any employee who meets the exemption criteria of this subpart and such supplemental interpretations or instructions as shall be issued by the Office of Personnel Management.

§ 551.202 General principles governing exemptions.

In all exemption determinations, the agency shall observe the principles that—

(a) Exemption criteria shall be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(b) The burden of proof rests with the agency that asserts the exemption.

(c) All employees who clearly meet the criteria for exemption must be exempted.

§ 551.203 Exemption of General Schedule employees.

(a) Any employee properly classified at GS–4 or below (or the equivalent level in other white collar pay systems) shall be nonexempt;

(b) Any employee properly classified at GS–5 through GS–10 (or the equivalent level in other white collar pay systems) shall be exempt only if the employee is an executive, administrative, or professional employee as defined in §§ 551.204, 551.205, and 551.206 of this subpart;

(c) Except as provided in § 551.207 of this subpart, any employee properly classified at GS–11 or above (or the equivalent level in other white collar pay systems) shall be presumed to be exempt under this subpart. An agency that properly classifies an employee at GS–11 or above shall be deemed to have satisfied the burden of proof for asserting exemption.

§ 551.204 Executive exemption criteria.

An "executive" employee is a supervisor, foreman, or manager who supervises at least three subordinate employees and who meets all the following criteria:

(a) The employee's primary duty consist of management or supervision. This primary duty requirement is met if—

(1) The employee is a General Schedule employee whose position is determined to be "Supervisory" or "Managerial" under the Supervisory Grade-Evaluation Guide;

(2) The employee is a Federal Wage System employee whose position fully meets or exceeds the "Foreman range of responsibility" as defined in the Job Grading Standard for Supervisors; or

(3) The employee is subject to a pay system other than the General Schedule or the Federal Wage System and the employee's position meets or exceeds the definition of Supervisor in the Supervisory Grade-Evaluation Guide or the employee's position fully meets or exceeds the "Foreman range or responsibility" as defined in the Job Grading Standard for Supervisors.

(b) In addition to the primary duty criterion that applies to all employees, Foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems) and employees classified at GS–5 or GS–6 (or the equivalent in other white collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work.

§ 551.205 Administrative exemption criteria.

An administrative employee is an advisor, assistance, or representative of management, or a specialist in a management or general business function or supporting service who meets all of the following criteria:

(a) The employee's primary duty consists of work that—

(1) Significantly affects the formulation or execution of management policies or programs; or

(2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a mangement official.

(b) The employee performs office or other predominantly nonmanual work which is—

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) The employee must frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS–5 or GS–6 (or the equivalent in other white collar systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions.

§ 551.206 Professional exemption criteria.

A professional employee is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) The employee's primary duty consists of—

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee.

(b) The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought process for satisfactory performance.

(c) The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule exployees classified at GS–5 or GS–6 (or the equivalent in other systems), must spend 80 percent or more of the worktime in a representative workweek in professional functions and work that is an essential part of those functions.

§ 551.207 Exceptions by OPM.

The Office of Personnel Management will provide advisory opinions on agency-proposed exceptions to the presumption of exemption for specific occupations at GS–11 or above (or the equivalent level in other white collar pay systems) which is specified in § 551.203(c) of this subpart. Exceptions may not be made before OPM consideration. Requests for advisory opinions from agencies shoud be sent to the Office of Personnel Management, Agency Compliance and Evaluation, 1900 E Street, NW., Washington, DC 20415.

§ 551.208 Foreign exemption.

(a) This section provides criteria for applying the "foreign exemption" contained in section 13(f) of the Act. An employee who is exempt under the foreign exemption is not subject to the minimum wage and overtime provisions of the Act. The exemption status of an employee to whom the foreign exemption is not applicable shall be

determined under the general criteria contained in this subpart.

(b) Except as provided in § 551.208(d), an agency shall apply the foreign exemption to any employee who is permanently stationed in an "exempt area" as defined in § 551.102(h).

(c) An agency shall also apply the foreign exemption on a workweek basis to an employee on temporary duty who is not permanently stationed in an exempt area, but who performs *all* hours of work in a given workweek in an exempt area.

(d) The foreign exemption is not applicable to an employee permanently stationed in an exempt area for any given workweek in which the employee performs *any* hours of work in the United States or in a terrritory under the jurisdiction of the United States.

§ 551.209 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

(a) This section is not applicable when an employee is detailed to an identical additional position or to a position of the same grade, series code, and basic duties as the employee is regularly assigned to. This section applies only when an employee is assigned to perform duties which are not included in the employee's representative workweek. For the period of any such temporary duty, the exemption criteria contained in §§ 551.202 through 551.207 of this subpart shall be applied using the procedures specified in this section.

(b) A nonexempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain nonexempt for the entire period of the termporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either—

(i) Classified at GS–7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other age systems);

(3) The employee's primary duty for the period of temporary duty is exempt duty as defined in this subpart.

(c) Except as provided in § 551.209(e), an exempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt for the entire period of the temporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either—

(i) Classified at GS–7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other wage systems);

(3) The employee's primary duty for the period of temporary duty is *not* exempt duty as defined in this subpart.

(d) An employee who becomes exempt under the criteria contained in § 551.209(b) shall be considered exempt for the entire period of temporary duty. An employee who becomes nonexempt under the criteria contained in § 551.209(c) shall be considered nonexempt for the entire period of temporary duty.

(e) An exempt employee who is classified at GS–5 or GS–6 (or the equivalent level in other white collar pay systems), or who is classified below General Foreman (or the equivalent level in other wage systems) who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt *only* if the employee spends more than 80 percent of a given workweek performing exempt duties, in which case the employee is exempt for that workweek.

(f) Notwithstanding any other provision of this section, and regardless of an employee's grade level, the agency may determine that an emergency situation exists which threatens the life or safety of people, or serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to perform emergency duties. In such a designated emergency the exemption status of an employee shall be determined on a workweek basis and the employee shall be nonexempt for any workweek in which the employee performs more than 20 percent nonexempt work.

[FR Doc. 86-4677 Filed 3-3-86; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is publishing final regulations on the Federal Employees Health Benefits (FEHB) Program to clarify and define appropriate uses of program reserves.

EFFECTIVE DATE: April 3, 1986.

FOR FURTHER INFORMATION CONTACT: Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, (202) 632–3772.

SUPPLEMENTARY INFORMATION: On August 9, 1985, OPM published proposed regulations at 50 FR 32207. The regulations were issued to (1) provide clear notice to health benefits carriers of the availability of the refund alternative in addition to the uses already specified for contingency reserves; (2) reduce the level of reserves health benefits carriers may hold and still qualify for a transfer of funds from the contingency reserves held by OPM to the special reserves of the carriers; and (3) add a mechanism for transferring excess reserves held by carriers to the contingency reserves held by OPM.

OPM received comments from nine plans (or their representatives), two underwriters, and two associations of health plans. The following discussion summarizes the changes to the proposed regulations based on the comments received. An evaluation of comments OPM did not adopt and the rationale for OPM's action is included under the appropriate subject heading.

Consistency With Law and Regulations

One commenter believed that the regulations were inconsistent with OPM's statutory authority because the law (5 U.S.C. 8909(a)) specifies that the portion of the contribution set aside for the contingency reserve is not to exceed 3 percent of the contributions toward the plan. However, 5 U.S.C. 8909(a) refers to amounts automatically set aside as premiums are collected, not to any subsequent amounts. Further, 5 U.S.C. 8909(b) specifically includes "other refunds made by a plan" as income to the contingency reserve. Therefore, we find no conflict between the regulations and the law.

Another commenter believed that the regulations conflict with OPM's procurement regulations (41 CFR 16–4.152–1(b)), which provide that a surplus of subscription charges collected by the carrier for an experience-rated plan over the cost of providing benefits is to be kept in a "special reserve account." Surpluses are to be carried over to a new contract year as a positive balance in the special reserve account, while deficits are to be carried over as a negative balance. These regulations specify the accounting process to be used when a surplus or deficit exists.

They do not prevent the transfer of a portion of the surplus to OPM's contingency reserves for the plan, nor do they prevent OPM from transferring funds from the contingency reserve to the special reserve when a deficit exists. Carriers will continue to carry part of their surpluses in their special reserve accounts; and the surpluses so carried will continue to be subject to OPM's procurement regulations.

Use of Contingency Reserves

Four commenters expressed concern about whether the reserves transferred to the contingency reserve would continue to be available to the carriers to increase benefits or reduce rates and whether plans would be involved in the decision as to how they would be used. The FEHB law gives OPM the discretion to use contingency reserves to increase benefits or reduce rates. In the past, OPM always consulted with the carriers on how excess reserves were to be used. Carriers will continue to be involved in determining how excess reserves will be used. The only effect the revised regulations have on the use of contingency reserves is to clarify that the refund alternative is also available as a means of reducing excess reserves.

Transfer of Carrier-Held Reserves to the Contingency Reserves

Several commenters objected, for various reasons, to the transfer of carrier-held reserves to the contingency reserves held by OPM. The revised regulations reflect the principle that FEHB Program funds should, to the extent consistent with sound administration, be held within the Government. Therefore, these regulations limit the carrier-held reserves to the amount needed to pay claims and to avoid cash-flow problems in the event of unanticipated fluctuations in claims experience.

Level of Carrier-Held Reserves That Triggers Transfer of Funds

Several commenters suggested that the level of carrier-held reserves that triggers a transfer of funds be tied to incurred claims rather than subscription income. They pointed out that the 1986 rates for some plans were set at an amount lower than necessary to cover benefit costs in order to draw down the reserves. Other commenters objected to including both special reserves and incurred claims reserves in the formula for triggering a transfer of reserve funds. One commenter objected to changing the trigger amount from 2 months to 1 month of special reserves for plans with more than 50 percent of their subscribers overseas.

OPM agrees that subscription income may not reflect the actual amount of reserves needed by carriers to pay claims. Therefore, the final regulations tie the maximum allowable level of carrier-held reserves for experience-rated plans to the monthly average of claims paid in the last 6 months of the contract year, plus administrative expenses and retentions. This is to say, the preferred minimum balance for the contingency reserves has been changed to reflect an average month's paid claims plus administrative expenses and retentions rather than subscription income. The maximum level for special reserves is expressed as 4 times the perferred minimum balance for the contingency reserves rather than 4 months of subscription income.

OPM believes that in Program-wide regulations incurred claims reserves and special reserves must be considered together. The amount of incurred, but not yet paid, claims varies from carrier to carrier. Since the amount of incurred claims is estimated, it is also subject to different assumptions on the part of the carriers. Only by using a total figure for incurred and special reserves can we establish a standard that can be applicable to plans across the board.

The trigger formula for reserve fund transfers for plans with more than 50 percent of their subscribers overseas applies to special reserves only. These plans can set their incurred claims reserves at a level that takes into consideration the higher degree of uncontrollable elements to which they are subject. We do not agree that more tha 1 month's special reserves is needed by these plans. However, the final regulations tie the limitation to a month's average of claims paid plus administrative expenses and retentions rather than to subscription income. This change better reflects the monthly amount needed by the plans to pay claims.

In addition, OPM has added language to the final regulations to clarify how carriers are to effect the transfer of their excess reserves to the contingency reserves that OPM maintains for their plan.

Transfers of Funds Based on Good Cause

A number of commenters indicated that they did not understand the provision [5 CFR 890.503(c)(5)] for allowing transfers of funds under conditions other than those specifically provided for in the regulations. This provision is intended to allow carriers to request funds from their contingency reserve when good cause exists. If the carrier provides adequate justification for the request, OPM can respond in a matter of days. This provision also allows carriers to transfer funds from their special reserves to the contingency reserves when good cause exists. The final regulations include language to clarify that carriers may make application to OPM for funds from their contingency reserve any time they have good cause. The funds transferred under this provision are not limited to the excess in contingency reserves over the preferred minimum balance.

Other Comments

A number of comments OPM received had to do with the contract rate-setting process. These regulations do not affect the rate-setting process nor do they establish a policy concerning the drawing down of reserve levels. The regulations have to do only with the conditions under which OPM will make payments to the carriers from the contingency reserves and the carriers will make payments to OPM from their special reserves.

One underwriter suggested that OPM's regulations should state that an underwriter could use its own funds to pay claims if the carrier's reserves were depleted and that the resulting loss in investment income would be reflected as an offset to other investment income derived in that year. These regulations do not require a carrier to operate with insufficient reserves. Insufficient reserves to pay claims that have been presented for payment would be adequate justification for OPM to transfer funds from the contingency reserves to the plan's special reserves. OPM did not adopt this suggestion because it is unnecessary.

Some of the comments OPM received indicate uncertainty as to when these regulations will affect the levels of carrier-held reserves. The regulations will apply to the 1986 contract year. That is, these regulations will apply to reserves held by the carriers on December 31, 1986. They will not apply to reserves held by the carriers on December 31, 1985.

E.O. 12291, Federal Regulations

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they relate to OPM's management of the Employees Health Benefits Funds

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913.

2. Section 890.503 is amended by revising paragraphs (c)(1)–(3) and (5) to read as follows:

§ 890.503 Reserves.

* * * * *

(c)(1) The contingency reserve of each plan is credited with (i) the three one-hunderd-hundred-and-fourths of the enrollment charge set aside for the contingency reserve from the enrollment charges for employees and annuitants enrolled for that plan; (ii) amounts transferred in accordance with law from other contingency reserves and the administrative reserve; (iii) income from investment of the reserve; (iv) its proportionate share of the income from investment of the administrative reserve; and (v) any return of reserves of the plan. The preferred minimum balance for the contingency reserve for community-rated plans is 1 month's subscription charges at the average monthly rate paid from the Employees Health Benefits Fund for the plan during the most recent contract period. The preferred minimum balance for the contingency reserve for experience-rated plans is 1 month's average of claims paid plus 1 month's average administrative expenses and retentions. For the purposes of this section, a month's average paid claims is one-sixth of the total claims paid during the last 6 months of the most recent contract period, and a month's average administrative expenses and retentions is one-twelfth of the administrative expenses and retentions for the most recent contract period. Amounts in excess of the preferred minimum balance for a contingency reserve account may be used with respect to the plan from which the reserve derives: To defray increases in future rates; to increase plan benefits; or to reduce contributions of eligible subscribers and the Government under the program through devices such as a temporary suspension of, or reduction in, required contributions or a refund of contributions to eligible subscribers and the Government.

(2) Except as provided by paragraphs (c)(3) and (c)(4) of this section, when, as of the end of a contract period, the total of all the reserves held by an experience-rated carrier for a plan amounts to *less* than 4 times the preferred minimum balance for the contingency reserve, the carrier is entitled to payment from the contingency reserve of the lesser of: An amount equal to the difference between 4 times the preferred minimum balance for the contingency reserve and the total of the reserves held by the carrier for the plan, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. OPM shall authorize this payment promptly after accepting the accounting report for the contract period. The carrier shall credit the amount so paid to the special reserve for the plan. Except as provided by paragraphs (c)(3) and (c)(4) of this section, when, as of the end of a contract period, the total of all reserves held by an experience-rated carrier for the plan amounts to *more* than 4 times the preferred minimum balance for the contingency reserve, the carrier shall return to OPM any excess over 4 times the preferred minimum balance for the contingency reserve to be credited to the contingency reserve administered by OPM for the plan. The payment shall be made at the same time the plan submits its annual accounting statement. If the accounting statement is not filed by the time limit specified in the plan's contract with OPM or the plan fails to return the excess reserves with the accounting statement, OPM may estimate the amount of excess reserves and offset that amount from future premium payments.

(3) If more than 50 percent of the enrollees in a plan are stationed at posts of duty outside the United States, its possessions, and the Commonwealth of Puerto Rico, the carrier's "special" reserve, as opposed to the total reserves held, shall be used to determine payments to and from the contingency reserve. The "special" reserve is equal to the excess of funds held over those needed to pay incurred claims yet to be presented for payment, administrative expenses, and retentions. When the special reserve held by the carrier for the plan at the end of a contract period amounts to less than the preferred minimum balance for the contingency reserve, the carrier is entitled to payment from the contingency reserve of the lesser of: An amount equal to the difference between the preferred minimum balance for the contingency reserve and the total of the special reserve held by the carrier for the plan, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. OPM shall authorize this payment promptly after accepting the accounting report for the contract period. The carriers shall credit the amount so paid to the special reserve for the plan. When the special reserve held by the carrier for the plan at the end of the contract period amounts to more than the preferred minimum balance for the contingency reserve, the carrier shall return to OPM any excess over the amount of the preferred minimum balance of the contingency reserve, to be credited to the contingency reserve administered by OPM for the plan. The payment shall be made at the same time the plan submits its annual accounting statement. If the accounting statement is not filed by the time limit specified in the plan's contract with OPM or the plan fails to return the excess reserves with the accounting statement, OPM may estimate the amount of excess reserves and offset that amount from future premium payments.

* * * * *

(5) In addition to those amounts, if any, paid under paragraphs (c)(1) through (c)(4) of this section, OPM may authorize such other payments from the contingency reserve as in the judgment of OPM may be in the best interest of employees and annuitants enrolled in the program. A carrier for a plan may apply to OPM at any time for a payment from the contingency reserve when the carrier has good cause, such as unexpected claims experience and variations from expected community rates. OPM will decide whether to allow the request in whole or in part and will advise the carrier of its decision. Amounts paid from the contingency reserve under this subparagraph and under the above subparagraphs of this paragraph shall be reported as subscription income in the year in which paid. By agreement with the carrier and where good cause exists, OPM may accept payment from carrier reserves for credit to the contingency reserve in an amount and under conditions other than those specified in paragraph (c) of this section.

[FR Doc. 86–4676 Filed 3–3–86; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

Adjustment of Status to That of Persons Admitted for Permanent Residence; Advance Parole

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule clarifies the intention of the Immigration and Naturalization Service concerning the granting of advance parole to applicants for adjustment of status.

Aliens granted advance parole whose adjustment applications are denied will be subject to the exclusion provisions of section 236 of the Act. Such aliens shall not be entitled to a deportation hearing. This amendment also eliminates the language concerning unintended or innocent and casual departure. Any departure without prior permission (advance parole) will terminate the adjustment application.

EFFECTIVE DATE: April 3, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633-3048.

For Specific Information: Robert Amerine, Program Analyst, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-5464.

SUPPLEMENTARY INFORMATION: Section 245(a) of the Immigration and Nationality Act, 8 U.S.C. 1255(a) authorizes the adjustment of status of an alien "who was inspected and admitted or paroled in the United States". Under the regulations prescribed by the Attorney General, an applicant for adjustment of status who wishes to leave the country and return may apply for advance permission to be paroled into the United States upon return to prosecute his or her application. This procedural device has been referred to as "advance parole". Recently there have been questions as to whether applicants for adjustment who have been paroled into the United States pursuant to a grant of advance parole, will be subject to exclusion or deportation proceedings if the application is subsequently denied. The United States Court of Appeals for the Fourth and Ninth Circuits, in large part relying on the prior language of 8 CFR 245.2(a)(3), determined that such paroled aliens whose adjustment applications have been denied are entitled to have the question of whether they can remain in the United States adjudicated in deportation rather that exclusion proceedings. *Joshi* v. *District Director, INS* 720 F.2d. 799 (4th Cir. 1983); *Patel* v. *Landon* 739 F.2d. 1455 (9th Cir. 1984).

Advance parole is not specifically mentioned in the Immigration and Nationality Act. The INS has developed this practice in conformity with 8 U.S.C. 1182(d)(5)(A) to be used in public interest or emergent situations. In *Landon* v. *Plasencia*, 459 U.S. 21, the Supreme Court held that "the language and history of Act * * * clearly reflect a congressional intent that whether or not the alien is a permanent resident, admissibility shall be determined in an exclusion hearing." An alien who is paroled into the United States does not effect an "entry" and thus remains subject to exclusion proceedings. *Leng May Ma* v. *Barber*, 357 U.S. 185.

The notice of proposed rulemaking was published on June 7, 1985 at 50 FR 23959 with a 60 day comment period. A total of ten comments were received by the Service during the allotted period. With one exception, the responses were generally in opposition to the proposed change in the regulation. All comments were carefully reviewed and full consideration was afforded to each. However, the Service has decided to publish the final rule as proposed.

The arguments advanced were not persuasive in light of the clear congressional intent to determine admissibility in exclusion rather than deportation hearings. It is equally clear that aliens who are paroled into the United States have not effected an "entry" and consequently are not afforded the same procedural benefits that the Act extends to aliens who have entered the United States.

Several comments relied heavily upon the *Joshi* and *Patel* decisions to buttress their contentions. Both of those decisions drew heavily on the language previously found at 8 CFR 245.2(a)(3) as justification for reversing lower court judgments upholding exclusion orders. The paroled alien appellants in each case argued that they were entitled to have their status determined in deportation proceedings. In our view, reliance on those decisions is misplaced, since amendment of the regulation will remove the underpinning of those decisions.

Several commenters argued to the effect that the proposed amendment would serve as a trap for the unwary. We believe that fear to be unfounded. The present I-485 application form which is used by aliens seeking adjustment of status contains the following admonition at the very top of the instruction page:

WARNING: If you consider departing from the United States to any country, including Canada and Mexico, before a decision is made on your application, consult with the office of the Immigration and Naturalization Service processing your case before departure, since a departure from the United States may result in a termination of your application.

We believe this information serves to inform aliens of the consequences of departure from the United States, and the necessity to obtain further information from the Immigration and Naturalization Service. While we view this warning to be more than adequate, the INS will consider the addition of further cautionary language when the I-485 and I-512 are modified or revised.

The adjustment of status regulations already provide at § 245.2(a) that a denied adjustment application by an alien paroled under section 212(d)(5) of the Act may be renewed *in exclusion proceedings* only under two conditions. First, the denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; second, the applicant's later absence from and return to the United States must have been under the terms of an advance parole authorization on Form I-512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application. The regulation at § 245.2(a)(3) as it is being revised will bring it in better conformity with the foregoing section.

The benefit afforded to the alien by the regulations promulgated under section 245 of the Act is essentially that of the convenience of avoiding a trip outside the United States to apply for an immigrant visa. In our view it is clearly not burdensome, unreasonable or harsh as some comments suggest, to require an alien who was granted the discretionary benefit of parole, but was deemed ineligible or denied adjustment of status to be placed in exclusion proceedings for adjudication of his status. The grant of advance parole to return to the United States is usually predicated in large part on the presumed strength of the pending adjustment application.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities. This order is not a major rule

within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 245

Aliens, Employment, Health care, Immigration, Immigration and Nationality Act, Passports and visas.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for Part 245 continues to read as follows, and the authority citation which follows § 245.2 is removed.

Authority: Secs. 101, 103, 201, 203, 204, 212, 245, 247; 66 Stat. 166, 173, 175, 178, 179, 182, 217, and 218; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255, and 1257, unless otherwise noted.

2. Section 245.2 is amended by revising paragraph (a)(3) to read as follows:

§ 245.2 Application.

(a) * * *

(3) *Departure.* The departure of an applicant for permanent resident status under section 245 of the Act or this part shall be deemed an abandonment of the application, constituting grounds for termination thereof, unless the applicant had previously been granted advance parole by the Service for such absence and was thereafter inspected upon return. If the application of such an individual granted advance parole is subsequently denied, the applicant will be subject to the exclusion provisions of section 236 of the Act. No alien granted advance parole and inspected upon return shall be entitled to a deportation hearing. In determining the date of "last arrival" within the meaning of section 1 of the Act of November 2, 1966, in the case of an applicant who was inspected and admitted or paroled into the United States subsequent to January 1, 1959, and who subsequently departed temporarily with no intention of abandoning his/her residence in the United States and was readmitted or paroled into the United States upon return, the date of the applicant's arrival after such temporary absence or absences shall not be included. In determining the date of the alien's "arrival" in the United States within the meaning of section 102 of the Act of October 28, 1977, in the case of an applicant who was physically present in the United States on March 31, 1975, or who was paroled into the United States subsequent to March 31, 1975, but prior to January 1, 1979, and who subsequently departed temporarily with no intention of abandoning his/her residence in the United States and was readmitted or paroled into the United States upon return, the date of the applicant's arrival after such temporary absence or absences shall be disregarded. For the purpose of section 102 of the Act of October 28, 1977, the date of the alien's "arrival" in the United States shall be the date of initial parole subsequent to March 31, 1975, but prior to January 1, 1979, as an Indochinese refugee under section 212(d)(5) of the Immigration and Nationality Act.

* * * * * *

Dated: February 11, 1986.

Lawrence J. Weinig,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-4371 Filed 3-3-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-113-AD; Amdt. 39-5249]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires the addition of tether straps to limit the opening motion of the escape slide cover on the aft doors of Boeing Model 737 airplanes. During recent testing, it was determined that, with rapid door opening, the escape slide cover can swing open far enough to allow the girt bar stowage bracket to hook in the doorway, temporarily arresting the door opening motion. This condition could cause delay in an emergency evacuation.

EFFECTIVE DATE: April 11, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. It may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-2932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to add an airworthiness directive which requires the installation of tether straps on Model 737 aft doors escape slide containers was published in the Federal Register on October 30, 1985 (50 FR 45115).

This modification will limit the opening motion of the aft escape slide containers and ensure that the girt bar stowage bracket cannot jam in the doorway during emergency door operation.

The comment period closed on December 23, 1985. Interested persons have been afforded an opportunity to comment on the proposed AD. Due consideration has been given to all comments received.

One comment was received in response to the Notice of Proposed Rulemaking. The commenter did not object to the modification, but requested that the compliance time be extended to one year instead of the six-month compliance time as proposed in the Notice. The commenter stated that service experience does not warrant a six-month compliance time. The FAA does not agree. The door jamming condition was demonstrated to be repeatable during testing. Since the modifications required are relatively simple, the FAA considers six months sufficient time for compliance.

This amendment reference Boeing Service Bulletin 737-25A1182, Revision 2, to reflect the latest revision of that document. The Notice referred to Revision 1; however, Revision 2 differs only editorially and in format from Revision 1, and there is no change in the effect of the AD.

After careful review of all available data, including all comments received, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

In addition, the cost estimate has been reduced to reflect the latest manpower estimates.

It is estimated that approximately 440 airplanes of U.S. registry will be affected by this AD. Approximately 2 manhours wil be required to modify each airplane and the average labor charge will be $40 per manhour. Based on these figures the total cost impact of

this AD on U.S. operators is estimated to be $35,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 737 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737-100, -200, and -300 airplanes, as specified in Boeing Service Bulletin 737-25A1182, Revision 2, dated November 12, 1985, certificated in any category. To correct aft door emergency opening characteristics, accomplish the following within 6 months after the effective date of this amendment, unless previously accomplished:

A. Install escape slide cover restraining straps in accordance with Boeing Service Bulletin 737-25A1182, Revision 2, Part II, dated November 12, 1985, or later FAA-approved revisions.

Note.—Installation of escape slide cover restraining straps in accordance with Boeing Service Bulletin 737-25A1182, Revision 1, dated September 24, 1985, is equivalent to such installation in accordance with Revision 2 of that service bulletin, and constitutes compliance with this paragraph.

B. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this amendment who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This service bulletin may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 11, 1986.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4587 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-62-AD; Amdt. 39-5105]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule; withdrawal and reissuance.

SUMMARY: This action withdraws and reissues a correction to Airworthiness Directive (AD) T85-11-52, Amendment 39-5105 (50 FR 29648; July 22, 1985), an AD applicable to the Boeing Model 737-300 series airplanes, which limited the airplanes to Jet A type fuels. The correction, as published, limited the applicability to Boeing Model 737-300 series aircraft equipped with Plessey Type 8240 Mark 1, 2, or 3 fuel boost pumps; however, the applicability statement should also have included TRW 10-60533-1 fuel boost pumps. This reissued correction to AD T85-11-52 includes the TRW pumps in the applicability statement.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office; telephone (206) 431-2969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA issued telegraphic AD T85-11-52 applicable to Boeing Model 737 series airplanes on June 7, 1985, after receiving reports of loss-of-power during climb when using JP-4 fuel. The AD was published as Amendment 39-5105 in the **Federal Register** on July 22, 1985 (50 FR 29648). The AD was inadvertently made effective to *all* Boeing Model 737-300 series airplanes by omission of the affected fuel boost pump identification from the applicability statement of the AD. A correction to AD T85-11-52, published in the **Federal Register** on February 4, 1986 (51 FR 4298), limited the AD applicability to airplanes equipped with Plessey Type 8240 Mark 1, 2, or 3 pumps. The AD should apply to Boeing Model 737-300 series airplanes equipped with Plessey Type 8240 Mark 1, Mark 2, or Mark 3 fuel boost pumps and TRW 10-60533-1 fuel boost pumps. Therefore, action is taken herein to make this correction.

Since this action only corrects an error in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days as good cause exists.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, the airworthiness directive correction published in the **Federal Register** on February 4, 1986 (51 FR 4298), is hereby withdrawn.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

2. By correcting the applicability statement of AD T85-11-52, Amendment 39-5105 (50 FR 29648; July 22, 1985), FR Doc. 85-17313, to identify properly the affected airplanes, as follows:

Boeing: Applies to Model 737-300 series airplanes equipped with Plessey Type 8240 Mark 1, 2, or 3 fuel boost pumps or TRW 10-60533-1 fuel boost pumps, certificated in any category.

This correction becomes effective March 13, 1986.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4589 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-10-AD; Admt. 39-5246]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection of the forward engine mount nuts for adequate self-locking capability, on Boeing Model 747 series airplanes equipped with Rolls-Royce engines. This action is prompted by a recent report of inadequate self-locking capability of some nuts. This action is necessary since inadequate self-locking capability of these nuts, if not corrected, could result in separation of the engine from the airplane.

EFFECTIVE DATE: March 24, 1986.

ADDRESSES: The service information on the inspection procedure may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There has been a recent report of self-locking nuts, part number BACN10HR162CS, on Boeing Model 747 airplanes, not having the required self-locking capability. This was found to have been the result of improper processing of the nuts. Should the clamp-up torque be lost, the nut may back off and allow the bolt to come out. Loss of a bolt could result in separation of an engine from the airplane.

Boeing Commercial Airplane Company has issued Alert Service Bulletin 747-71A2216, dated December 20, 1985, which describes the specific procedures to be used to inspect for adequate self-locking torque on forward engine mount nuts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive is being issued which requires inspection of forward engine mount nuts for adequate self-locking torque, and replacement of defective nuts, in accordance with Boeing Alert Service Bulletin 747-71A2216.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes equipped with Rolls-Royce engines, certificated in any category, listed in Boeing Alert Service Bulletin 747-71A2216, dated December 20, 1985.

To detect faulty self-locking nuts that could lead to separation of an engine, accomplish the following, unless already accomplished:

A. Within 30 days after the effective date of this AD, perform a one-time inspection of the forward engine mount nuts for adequate self-locking torque, in accordance with Boeing Alert Service Bulletin 747-71A2216, dated December 20, 1985, or later FAA-approved revisions.

B. Defective nuts must be replaced prior to further flight.

C. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection time in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the change for that operator.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received information on inspection procedures from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 24, 1986.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4588 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-09-AD; Amdt. 39-5247]

Airworthiness Directives; DeHavilland Aircraft of Canada, Ltd., Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing telegraphic airworthiness directive (AD) which imposes a reduced altitude operating limit on certain deHavilland Model DHC-8-101 airplanes, to prevent elevator vibration until the elevator control surface and spring tab mass balance weights are modified. This AD deletes the operating limitation and requires the modification referenced in the telegraphic AD for those airplanes, and requires modification of the elevator mass balance weights on certain other Model DHC-8-101 airplanes, unless already accomplished. This action is considered necessary to preclude elevator vibration. Elevator vibration, or the consequent flutter, could result in structural failure of the airplane.

EFFECTIVE DATE: March 24, 1986.

ADDRESSES: The applicable service information specified in this AD may be obtained upon request to deHavilland Aircraft of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2978; or Mr. Vito Pulera, Airframe Branch, ANE-172, FAA, New England Region, New York Aircraft Certification Office, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: The Canadian Air Transport Administration, which is the airworthiness authority for Canada, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on deHavilland (DHC) Model DHC-8 airplanes.

On January 3, 1986, the FAA issued telegraphic AD T85-26-52, which imposes a reduced altitude operating limit on Model DHC-8-101 airplanes, serial numbers 15 through 24, until the elevator and spring tab mass balance weights are modified in accordance with DHC Modification 8/0468. That AD followed the issuance, on the same day, of DHC Service Bulletin A8-55-3 and Canadian Air Transport Administration (CATA) telegraphic AD CF-86-01, which required the same action. These actions were prompted by a report of elevator vibration on an airplane, serial number 21, while it was being operated at the altitude limit.

On January 14, 1986, the FAA learned that two previous incidents of elevator vibration had occurred on another airplane, serial number 18. It was reported that the airplane had been exposed to water by washing and to precipitation in freezing weather. The vibration could not be duplicated after the elevator balance was increased from the minimum tolerance to a nominal tolerance level. DHC and CATA concluded from these incidents that the elevator flutter margins may be inadequate. DHC issued Service Bulletin A8-55-4 on January 15, 1986, describing DHC Modification 8/0478 to increase the elevator mass balance weights on airplanes, serial numbers 1 through 14. The CATA issued revised AD CF-86-01 R1 on January 13, 1986, to make the modifications mandatory.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, this AD supersedes T85-26-52, and requires modification of the elevator and spring tab mass balance weights for Model DHC-8 airplanes, serial numbers 15 through 24; additionally, it requires modification of the elevator mass balance weights for airplanes, serial numbers 1 through 14.

Further, since a situation existed, and still exists, that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to public interest, and good cause exists to make the amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

DeHavilland Aircraft of Canada, Ltd.: Applies to Model DHC-8-101 airplanes, serial numbers 1 through 24, certificated in any category. To assure structural integrity of the elevator and spring tab, accomplish the following within the next 200 flight hours or 30 days after the effective date of this AD, whichever comes first, unless already accomplished:

A. For airplanes, serial numbers 1 through 14, accomplish Modification No. 8/0478 to the elevator mass balance weights as described in deHavilland Aircraft of Canada, Ltd., Service Bulletin No. A8-55-4, dated January 15, 1986.

B. For airplanes, serial numbers 15 through 24, the limitation imposed by telegraphic AD T85-26-52, issued January 3, 1986, may be removed from the Airplane Flight Manual when Modification No. 8/0468 to the spring tab and elevator mass balance weights, as described in deHavilland Aircraft of Canada, Ltd., Service Bulletin No. A8-55-3, dated January 3, 1986, has been incorporated.

C. Alternate means of compliance which provide an acceptable level of s may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to deHavilland Aircraft of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This supersedes telegraphic AD T85-26-52, dated January 3, 1986.

This amendment becomes effective March 24, 1986.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4585 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-139-AD; Amdt. 39-5248]

Airworthiness Directives; Gates Learjet Models 24D, 24D-A, 24E, 24F, 24F-A, 25, 25B, 25C, 25D, 25F, 28, 29, 35, 35A, 36, and 36A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action supersedes an existing airworthiness directive (AD) which requires repetitive inspections of the battery and battery vent system on certain Gates Learjet airplanes. This amendment requires relocation of the battery vent inlet which is necessary to eliminate the potential for a fire and explosion within the battery, caused by leaking fuel entering the battery inlet vent.

EFFECTIVE DATE: April 11, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may also be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by adopting a new airworthiness directive to require relocation of the battery inlet vent from the bottom of certain Gates Learjet series airplanes to the side of the airplane, in accordance with certain Gates Learjet Corporation service bulletins was published in the **Federal Register** on December 6, 1985 (50 FR 49945). Further, this proposal would supersede AD 85-22-04, Amendment 39-5161 (50 FR 43565; October 28, 1985), by requiring a modification in lieu of repetitive inspections.

The comment period for proposal closed January 28, 1986, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Approximately 577 airplanes of U.S. registry will be affected by this AD. The modification will require approximately 13.5 hours to accomplish, at an average labor charge of $40 per manhour. Existing hardware and components are utilized for vent relocation; therefore, no parts cost is anticipated. Based on these figures, the total cost impact of this AD on U.S. operators will be $311,580.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($540). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By superseding Airworthiness Directive (AD) 85-22-04, Amendment 39-5161 (50 FR 43565; October 28, 1985), with the following new AD:

Gates Learjet Corporation: Applies to the followng Gates Learjet models and serial numbers:

Models	Serial No.
24D, 24D-A, 24E, 24F, 24F-A	218; 230 thru 357.
25, 25B, 25C, 25D, 25F	059; 061; 066 thru 373.
28	001 thru 005.
29	001 thru 004.
35, 35A	001 thru 570; 589 thru 600.
36, 36A	001 thru 053; 055.

Compliance as indicated in the body of the AD.

To eliminate the potential for a fire and explosion within the battery, caused by leaking fuel entering the battery vent, accomplish the following within the next 200 flight hours, unless already accomplished:

A. Relocate the battery inlet vent in accordance with instructions contained in Gates Learjet Corporation Service Bulletin (SB) 24/25-334A (for Models 24 and 25 series airplanes), SB 28/29-24-5A (for Models 28 and 29 series airplanes), or SB 35/36-24-10 (for Models 25 and 26 series airplanes), July 18, 1985, or later FAA-approved revisions.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the modification requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This Amendment supersedes Amendment 39-5161 (50 FR 43565; October 28, 1985), AD 85-22-04.

This Amendment becomes effective April 11, 1986.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4586 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; the Automobile; Property Essential to Self-Support; the Home; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Correction of final rule.

SUMMARY: In the Final Rule which appeared in the **Federal Register** on October 22, 1985 (50 FR 42683), § 416.1212 of Regulations No. 16 was revised. That section should have included paragraph (d), which explains how we treat the proceeds from the sale of an excluded home and was not changed by the revision. Section 416.1212 is being corrected to reinstate paragraph (d), which was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7463.

SUPPLEMENTARY INFORMATION: A revision of § 416.1212 of Regulations No. 16 was published as a Final Rule on October 22, 1985 (50 FR 42683). That final rule inadvertently omitted

paragraph (d) of § 416.1212, which was not changed by the revision. That paragraph provided for excluding from resources the proceeds from the sale of an excluded home which are used within 3 months of the date of receipt to purchase another home. In order to correct § 416.1212, paragraph (d) is added to read as follows:

§ 416.1212 Exclusion of the home.

* * * * *

(d) *Proceeds from the sale of an excluded home.* The proceeds from the sale of a home which is excluded from the individual's resources will also be excluded from resources to the extent they are intended to be used and are, in fact, used to purchase another home, which is similarly excluded, within 3 months of the date of receipt of the proceeds.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: February 26, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-4654 Filed 3-3-86; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 178

[Docket No. 84F-0222]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers, Dodecyldiphenyloxidedisulfonic acid, etc.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dodecyldiphenyloxidedisulfonic acid, sulfonated tall oil fatty acid, and neo-decanoic acid as components in a sanitizing solution for use on food-processing equipment and utensils that contact food and on glass bottles and other glass containers intended for holding milk. This action responds to a petition filed by Pennwalt Corp. The firm has since turned over the rights of the petition to Henkel Corp.

DATES: Effective March 4, 1986; objections by April 3, 1986.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nuturition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 12, 1984 (49 FR 28456), FDA announced that a petition (FAP 4H3808) had been filed by Pennwalt Corp., Three Parkway, Philadelphia, PA 19102. Since that time, the firm has turned over the rights of the petition to Henkel Corp., 300 Brookside Ave., Ambler, PA 19002. The petition proposed that the food additive regulations be amended to provide for the safe use of dodecyldiphenyloxidedisulfonic acid, sulfonated tall oil fatty acid, and neo-decanoic acid as components in a sanitizing solution for use on food-processing equipment and utensils that contact food and on glass bottles and other glass containers intended for holding milk.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before April 3, 1986 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.1010 by adding new paragraphs (b)(29) and (c)(24) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(29) An aqueous solution containing dodecyldiphenyloxidedisulfonic acid (CAS Reg. No. 30260-73-2), sulfonated tall oil fatty acid (CAS Reg. No. 68309-27-3), and neo-decanoic acid (CAS Reg. No. 26896-20-8). In addition to use on food-processing equipment and utensils, this solution may be used on glass

bottles and other glass containers intended for holding milk.

(c) * * *

(24) Solutions identified in paragraph (b)(29) of this section will provide at least 237 parts per million and not more than 474 parts per million dodecyldiphenyloxidedisulfonic acid, at least 33 parts per million and not more than 66 parts per million sulfonated tall oil fatty acid, and at least 87 parts per million and not more than 174 parts per million neo-decanoic acid.

* * * * *

Dated: February 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-4604 Filed 3-3-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 84F-0099]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Hydrogen Peroxide, Etc.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of an aqueous solution containing hydrogen peroxide, peracetic acid, acetic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as a sanitizing solution on food-contact surfaces. This action responds to a petition filed by Bonewitz Chemical Services, Inc. Bonewitz Chemical Services, Inc., was subsequently merged into Henkel Corp.

DATES: Effective March 4, 1986; objections by April 3, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF-355), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 26, 1984 (49 FR 18043), FDA announced that a petition (FAP 4H3781) had been filed by Bonewitz Chemical Services, Inc., Burlington, IA 52601, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of an aqueous solution containing hydrogen peroxide, peracetic acid, acetic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as a sanitizing solution on food-contact surfaces. Bonewitz Chemical Services, Inc., was subsequently merged into Henkel Corp., 300 Brookside Ave., Ambler, PA 19002.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 25.31a(b)(6).

Any person who will be adversely affected by this regulation may at any time on or before April 3, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.1010 by adding new paragraphs (b)(30) and (c)(25) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(30) An aqueous solution containing hydrogen peroxide (CAS Reg. No. 7722-84-1), peracetic acid (CAS Reg. No. 79-21-0), acetic acid (CAS Reg. No. 64-19-7), and 1-hydroxyethylidene-1,1-diphosphonic acid (CAS Reg. No. 2809-21-4).

(c) * * *

(25) Solutions identified in paragraph (b)(30) of this section shall provide, when ready to use, not less than 550 parts per million and not more than 1,100 parts per million hydrogen peroxide, not less than 100 parts per million and not more than 200 parts per million peracetic acid, not less than 150 parts per million and not more than 300 parts per million acetic acid, and not less than 15 parts per million and not more than 30 parts per million 1-hydroxyethylidene-1,1-diphosphonic acid.

* * * * *

Dated: February 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-4603 Filed 3-3-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPING

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Office of the Assistant Secretary, for Community Planning and Development; and Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 200, 203, 207, 213, 220, 221, 231, 232, 241, 242, 511, 571, and 970

[Docket No. N-86-1593]

Announcement of Effective Dates for Recently, Published Final and Interim Rules

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Office of the Assistant Secretary for Community Planning and Development; and Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of Effective Dates for Final and Interim rules.

SUMMARY: The Department of Housing and Urban Development Act requires HUD to wait thirty calendar days of continuous session of Congress before it makes a published final or interim rule effective. Since Congress adjourned *sine die* before the thirty days elapsed for certain rules published in November and December, 1985, and since the statutory period is about to be met for certain rules published in January, 1986, the Department is now announcing the effective dates for the following final and interim rules.

EFFECTIVE DATES: See the individual amendments below.

FOR FURTHER IMFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755-7055. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)), requires HUD to delay effectiveness of a published final or interim rule until thirty days of continuous session of Congress have elapsed. Effective dates for the following listed rules published between November, 1985 and January, 1986 had to be delayed until the second session of the 99th Congress reconvened for this calendar year, and until thirty session days had elapsed.

Accordingly, the Department amends 24 CFR as follows:

CHAPTER II—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER

PART 200—[AMENDED]

1. In FR Doc. 86-708, 24 CFR Part 200, Use of Materials Bulletin No. 38i—HUD Building Product Standards and Certification Program for the Grademaking of Lumber [Docket No. R85-1247; FR-2109], beginning on page 1369, in the issue of Monday, January 13, 1986, the effective date is March 1, 1986.

PART 203—[AMENDED]

2. In FR Doc. 85-30084, 24 CFR Part 203, Use of Loan Correspondents in Connection with FHA Mortgage Insurance [Docket No. R-85-1226; FR-1954], beginning on page 51673, in the issue of Thursday, December 19, 1985, the effective date is March 1, 1986.

PARTS 207, 213, 220, 221, 231, 232, 241, AND 242—[AMENDED]

3. In FR Doc. 85-826, 24 CFR Parts 207, 213, 220, 221, 231, 232, 241, and 242, Prepayment Limitation for Bond-Financed Projects [Docket No. R-86-1229; FR-1819], beginning on page 2358, in the issue of Thursday, January 16, 1986, the effective date is March 1, 1986.

PARTS 232 AND 242—[AMENDED]

4. In FR Doc. 85-27673, 24 CFR Parts 232 and 242, Refinancing of HUD-Insured Hospital Mortgages [Docket No. R-85-1234; FR-1806], beginning on page 47726, in the issue of Wednesday, November 20, 1985, the effective date is March 1, 1986.

CHAPTER V—OFFICE OF THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT

PART 511—[AMENDED]

5. In FR Doc. 85-27606, 24 CFR Part 511, Rental Rehabilitation Program; Performance Adjustments to Formula Allocations [Docket No. R-85-1260; FR-2055], beginning on page 50594, in the issue of Tuesday, December 10, 1985, the effective date section is **DATES:** Effective date: March 1, 1986. Comment due date: February 10, 1986.

PART 571—[AMENDED]

6. In FR Doc. 85-30082, 24 CFR Part 571, Community Development Block Grants for Indian Tribes and Alaskan Native Villages; Conflict of Interest [Docket No. R-85-1228; FR-2016], beginning on page 51675, in the issue of Thursday, December 19, 1985, the effective date is March 1, 1986.

CHAPTER IX—OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING

PART 970—[AMENDED]

7. In FR Doc. 85-29553, 24 CFR Part 970, Public Housing Program; Demolition or Disposition of Public Housing Projects [Docket No. R-85-1179; FR-1892], beginning on page 50891, in the issue of Friday, December 13, 1985, the effective date is March 1, 1986.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 27, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86-4617 Filed 3-3-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8078]

Procedure and Administration; Tax Shelter Registration

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to tax shelter registration. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the **Federal Register**. Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations affect

organizers, sellers, investors and certain other persons associated with investments that are considered tax shelters.

DATES: The regulations apply to tax shelters in which any interest is first sold after August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Paulette Chernyshev of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:LR:T). Telephone 202–566–3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the temporary Procedure and Administration Regulations (26 CFR Part 301) published in the **Federal Register** on August 15, 1984 (49 FR 32712). The temporary regulations amended by this document relate to tax shelter registration under section 6111 of the Internal Revenue Code of 1954, as added by section 141 of the Tax Reform Act of 1984 (Pub. L. 98–369 98 Stat. 678). This document also amends the Table of OMB Control Numbers (26 CFR Part 602).

The temporary regulations have been drafted in question and answer format. No inference should be drawn regarding issues not raised herein or because certain questions and not others are included. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register**.

Explanation of Provisions

Question and answer 45 of the temporary regulations relating to tax shelter organizer is not required to file an amended application for registration if the facts relating to the tax shelter change after the tax shelter has been registered. A number of commentators have requested that tax shelter organizers be allowed to file amended applications for registration. Accordingly, the temporary regulations have been revised to permit, but not require, the filing of amended applications in certain circumstances. However, permission to file an amended application does not alter the requirement to file a complete and accurate initial application by the required date. If the initial application was timely filed and contained complete and accurate information, the filing of an amended application to reflect later developments will not affect the determination as to whether the initial application would be subject to penalty.

Question and answer 52 of the temporary regulations required a person who sells (or otherwise transfers) an interest in a tax shelter to furnish the registration number of the tax shelter to the purchaser (or transferee) at the time of the sale (or transfer) of the interest (or, if later, within 7 days after the seller or transferor receives the registration number). Commentators have requested that sellers be allowed more time to furnish the registration number. Accordingly, the temporary regulations have been amended to provide that the seller (or transferor) must furnish the registation number to the purchaser (or transferee) at the time of sale (or transfer) of the interest (or, if later, within 20 days after the seller or transferor receives the registration number). The regulations continue to provide that a written statement explaining that a registration number has been applied for and providing certain other information must be furnished to the purchaser (or transferee) at the time of the sale if the registration number is not furnished at that time.

Executive Order 12291, Regulatory Flexibility Act, amd Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. A general notice of poposed rulemaking is not required for temporary regulations. Accordingly, the temporary regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act.

Drafting Information

The principal author of these regulations is Paulette Chernyshev of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulaions on matters of both substance and style.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 301 and 26 CFR Part 602 are as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 301.6111–1T also issued under 26 U.S.C. 6111.

Par. 2. Section 301.6111–1T is amended by revising answers 45 and 52, adding new question and answer 45A, and amending the table of contents to reflect the additional question and answer. The revised and added provisions read as follows:

§ 301.6111–1T Questions and answers relating to tax shelter registration (Temporary).

* * * * *

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Information reported on an amended application.....45A

* * * * *

Q–45. If the facts relating to a tax shelter change after the tax shelter has been registered, must the tax shelter be registered again or must an amended application for registration be filed by the tax shelter organizer?

A–45. No. The tax shelter organizer, however, is permitted to file an amended application if a material change in facts occurs after the initial registration. A material change in facts is—

(1) A change in the identifying information relating to the tax shelter or tax shelter organizer,

(2) The acquisition or construction of a principal asset not reported on the initial application for registration,

(3) A change in the method of financing a minimum investment unit, or

(4) A change in the principal business activity.

In addition, a change in any tax shelter ratio reported on the initial application for registration that increases or decreases the reciprocal of the tax shelter ratio (*i.e.*, the fraction in which the amount of the applicable investment base is the numerator and the amount of the applicable deductions

and credits is the denominator) by 50 percent or more is a material change in facts. For example, if the tax shelter ratio increases from 2 to 1 to 4 to 1, the reciprocal of the tax shelter ratio decreases from ½ to ¼, a 50-percent decrease. Similarly, if the tax shelter ratio decreases from 6 to 1 to 4 to 1, the reciprocal of the tax shelter ratio increases from ⅙ to ¼, a 50-percent increase. In either case, there is a material change in facts and an amended application could be filed.

Q–45A. What information should be included on an amended application for registration?

A–45A. The tax shelter organizer must include the identifying information requested on Form 8264, Application for Registration of a Tax Shelter, and the tax shelter registration number that has been assigned to the tax shelter. In addition, the tax shelter organizer should include any other information requested on Form 8364(1) that has changed since the tax shelter was registered, or (2) that the tax shelter organizer did not know at the time the tax shelter was registered but has learned of since the registration.

For example, assume that A organizes partnership L, a blind pool that will invest in real estate. Before the real estate is identified or acquired, interests in L will be offered to the public in an offering that must be registered with the Securities and Exchange Commission. Although A does not know what real estate L will acquire and therefore is unable to calculate the tax shelter ratio with certainty, A concludes (based on representations made or to be made) that the tax shelter ratio will exceed 2 to 1 as to some of the investors. Accordingly, A registers L as a tax shelter. A attaches a statement to the application for registration, explaining that L is a blind pool organized to invest in real estate, but that L has not yet acquired any real estate. In addition, A attaches a statement explaining that although the tax shelter ratio is expected to exceed 2 to 1, A cannot compute the tax shelter ratio with certainty because L has not yet acquired any real estate. Several months after L is registered, L acquires a shopping center. A may file an amended application for registration. In addition to reporting the identifying information and the tax shelter registration number on the amended application, A should report the shopping center as the principal asset and the recomputed tax shelter ratio.

As another example, assume that C organizes a limited partnership that is a tax shelter. On the application for registration, C reports that the tax shelter ratio is 2.2 to 1. After the partnership has been registered, C finds that the partnership is unable to attract sufficient investors. To make investing in the partnership more attractive, C decides to offer financing for the purchase or interests in the partnership. As a result of the change in financing, the tax shelter ratio will be 5 to 1. Because there is a change in financing and a change in the tax shelter ratio that decreases the reciprocal of the tax shelter ratio by 50 percent or more, C may file an amended application for registration. In addition to reporting the identifying information and the tax shelter registration number on the amended application, C should report the recomputed tax shelter ratio and information relating to the change in financing.

* * * * *

Q–52. When must the registration number be furnished to purchasers of interests in the tax shelter?

A–52. The person who sells (or otherwise transfers) an interest in a tax shelter must furnish the registration number to the purchaser (or transferee) at the time of sale (or transfer) of the interest (or, if later, within 20 days after the seller or transferor receives the registration number). If the registration number is not furnished at the time of the sale (or other transfer), the seller (or transferor) must furnish the statement described in A–54 to the purchaser (or transferee) at the time of the sale (or other transfer). If interests in a tax shelter were sold before September 1, 1984, all investors who acquired their interests in the tax shelter before September 1, 1984, must be furnished with the registration number of the tax shelter by December 31, 1984. The registration number will be considered furnished to the investor if it is mailed to the investor at the last address of the investor known to the person required to furnish the number.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 301.6111–1T . . . 1545–0865".

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: February 11, 1986.

J. Roger Mentz,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86–4683 Filed 3–3–86; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 601

Search and Duplication Service Fees

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of Statement of Procedural Rules.

SUMMARY: This document contains amendments to the Statement of Procedural Rules (SPR) to reflect changes in the fees charged for search and duplication services. The provisions are amended to conform to Department of Treasury Regulations related to the disclosure of records under the Freedom of Information Act and to incorporate a recent change in charges for copies of returns and return information.

EFFECTIVE DATE: April 25, 1983, except § 601.702(f)(5) (regarding charges for copies of returns, etc.) is effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mark S. Jennings of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW. Washington, DC 20224: Attention: CC:LR:T (202) 566–3458, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the SPR (26 CFR Part 601).

Section 601.702(f) of the SPR, relating to fees for services, is amended to conform with Treasury Department Regulations at 31 CFR 1.6 as amended April 25, 1983, (48 FR 12350). The section is also amended to reflect Rev. Proc. 85–56, 1985–46 I.R.B. 45 (modifying Rev. Proc. 66–3, 1966–1 C.B. 601) regarding charges for copies of returns and transcripts.

The Treasury Department amended its regulations implementing the Freedom of Information Act (FOIA). The amendment increased the fees charged for duplication, search, and unpriced printed material to reflect increased

costs to the Department. The fee for copying records is $.15 per copy of each page made by photocopy or similar process. The rate of $.15 per copy of each page also applies to preprinted materials, which will no longer be available at reduced rates. The search fee has been increased to $10.00 for each hour or fraction thereof and applies to all searches, including those which take less than one hour. Charges for computer searches will reflect the actual direct cost to the Department, as will fees for computer printouts. Section 601.702(f) of the SPR is amended to reflect these changes.

Rev. Proc. 85–56, 1985–46 I.R.B. 45, modified Rev. Proc. 66–3, 1966–1 C.B. 601 to reflect the implementation of a pre-paid fixed fee system for furnishing taxpayers with photocopies of their tax returns or transcripts of return information. The charge for a photocopy of a tax return is $4.25 and the charge for a transcript of tax information is $2.25. The Revenue Procedure includes instructions for making requests for copies and advance payments. The purpose of the new system is to eliminate the administrative costs involved in billing taxpayers who request copies of returns and return information. Requiring payment in advance will ensure that the total cost of securing and furnishing photocopies will be paid by those individuals who request such information. Section 601.702(f) is amended to add a new paragraph (f)(5) to set forth these rules.

Executive Order 12291

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that Regulatory Impact Analysis is therefore not required.

Paperwork Reduction Act

The collection of information contained in this regulation has been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. This collection has been approved by OMB (Control No. 1545–0429).

Drafting Information

The principal author of these amendments to the Statement of Procedural Rules is Sandra E. Wallach of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the amendments both on matters of substance and style.

List of Subjects in 26 CFR 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Taxes.

Adoption of Amendments to the Statement of Procedure Rules

Accordingly, 26 CFR Part 601 is amended as follows:

PART 601—[AMENDED]

Paragraph 1. The authority for Part 601 continues to read in part:

Authority: 5 U.S.C. 301 and 502.

Par. 2. Section 601.702 is amended as follows:

1. Paragraphs (f)(3) and (f)(4) are revised to read as set forth below.

2. Paragraphs (f) (5), (6), (7), (8), and (9) are redesignated as paragraphs (f) (6), (7), (8), (9), and (10) respectively, and a new paragraph (f)(5) is added, to read as set forth below.

3. Paragraph (f)(6) as redesignated is amended by removing the first two sentences.

§ 601.702 Publication and public inspection.

* * * * *

(f) *Fees for services.* * * *

(3) *Search services.* Fees charged for search services are as follows:

(i) Searches other than for computerized records—$10.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in finding the records and information within the scope of the request.

(ii) Searches for computerized records—Actual direct cost of the search. The fee for computer printouts will be actual costs.

(iii) Searches requiring travel or transportation—Shipping charges to transport records from one location to another, or for the transportation of an employee to the site of requested records when it is necessary to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

(iv) Other services and materials requested, pursuant to the Freedom of Information Act, which are not covered by this part are chargeable at the actual cost to the Internal Revenue Service.

(4) *Duplication other than for returns, transcripts of return information, and related documents.* Fees charged for duplication other than for returns, transcripts of return information, and related documents are as follows:

(i) $.15 per copy of each page, up to 8½" x 14", made by photocopy or similar process.

(ii) Photographs, films, and other materials—actual cost of reproduction.

(iii) Records may be released to a private contractor for copying and the requester will be charged the actual cost of duplication charged by the private contractor.

(iv) When other duplications not specifically identified above are requested and provided pursuant to the Freedom of Information Act their direct cost to the Internal Revenue Service shall be charged.

(5) *Charges for copies of returns, transcripts of return information, and related documents.* Charges for furnishing copies of returns, transcripts of return information, and related documents are as follows:

(i) A charge of $4.25 will be made for each request for a copy of a return or other related document (other than Employee Plans and Exempt Organization Returns). Payments are to be submitted in advance using IRS Form 4506, Request For Copy of Tax Form or Individual Income Tax Account Information.

(ii) A charge of $2.25 will be made for each request for a transcript of individual income tax account information. Payments shall be submitted according to procedures prescribed in paragraph (g)(5)(i) of this section.

(iii) A charge of $1.00 for the first page and $.15 for each subsequent page will be made for copies of Employee Plans and Exempt Organizations tax returns and related documents. Payments will be submitted subsequent to receipt of Form 2860, Document Transmittal and Bill.

* * * * *

§ 601.9000 [Amended]

Par. 3. Section 601.9000(c) is amended by inserting in the appropriate place in the table "§ 601.702(f)(2) . . . 1545–0429".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–4684 Filed 3–3–86; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1126-86]

Delegation of Authority Under the Department of Justice Asset Forfeiture Fund

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Sections 524(c)(1)(F) and (3) of Title 28 of the United States Code provide for the Attorney General or his delegate to purchase evidence of any violation of the Controlled Substances Act or the Controlled Substances Import and Export Act. Such delegation is limited to the Director of the Federal Bureau of Investigation (FBI) and the Administrator of the Drug Enforcement Administration (DEA), when the evidence to be purchased is valued at $100,000 or more. Subsection (2) of section 524(c) provides for the Attorney General or his delegate to pay awards for information or assistance leading to civil or criminal forfeitures under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 *et seq.*) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations Statute (18 U.S.C. 1961 *et seq.*). Where such awards are $10,000 or more, such delegation of payments may not be made to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the FBI or the Administrator of the DEA.

This order delegates to the Director of the FBI and the Administrator of the DEA the ability to purchase evidence and make awards from the Department of Justice Assets Forfeiture Fund. Where there is the need to purchase evidence of $100,000 or more, the Director of the FBI and the Administrator of the DEA are hereby given such delegated authority. All of the delegations granted above are provided for in subsections (c)(1), (2) and (3) of section 524 of Title 28, and are deemed to be effective as of the date of the appropriation for payment from the Department of Justice Assets Forfeiture Fund, August 15, 1985.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Brad Cates, Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, DC 20530; (202) 272-6420.

SUPPLEMENTARY INFORMATION: This rule delegates specific duties of the Attorney General to the Director of the FBI and the Administrator of the DEA, and is, therefore, a necessary act of internal management of the Department of Justice. The order is not a rule within the meaning of Executive Order 12291, section (1)(a). The order does not affect a substantial number of small business entities and is not, therefore, subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Part 0

Authority delegations (Government Agencies); Organization and Functions (Government agencies).

PART 0—[AMENDED]

By virtue of the authority vested in me by 5 U.S.C. 301 and 28 U.S.C. 509, 510 and 524, Part 0 of Chapter I of Title 28, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: 5. U.S.C. 301, 2303; 8 U.S.C. 1103; 15 U.S.C. 664(K); 18 U.S.C. 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 200(c); 50 U.S.C. App. 2001–2017p; Pub. L. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. A new paragraph (k) is added in § 0.85 to read as follows:

§ 0.85 General functions.

* * * * *

(k) Payment of awards (including those over $10,000) under 28 U.S.C. 524(c)(2), and purchase of evidence (including the authority to pay more than $100,000) under 28 U.S.C. 524(c)(1)(F).

3. A new paragraph (d) is added in § 0.101 to read as follows:

§ 0.101 Specific functions.

* * * * *

(d) Payment of awards (including those over $10,000) under 28 U.S.C. 524(c)(2) and purchase of evidence (including the authority to pay more than $100,000) under 28 U.S.C. 524(c)(1)(F).

Dated: February 13, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86-4433 Filed 3-3-86; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[FCC 86-86]

Amendments of the Commission's Rules; Rulemaking Documents

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules to clarify §§ 0.411(b)(2), 0.445 (b) and (c), and 1.412(a)(1) of the Commission's rules by adding language which specifies that summaries of Notices of Proposed Rulemaking and other rulemaking decisions adopted by the Commission constitute rulemaking documents for purposes of **Federal Register** publication. In addition, §§ 0.416, 0.445(b), 0.445(c), and 0.445(d) of the rules are being amended to enable the Commission to reduce the amount it publishes in the *FCC Reports*. These actions are necessary in order to accommodate current and future budgetary restrictions.

EFFECTIVE DATE: March 4, 1986.

FOR FURTHER INFORMATION CONTACT: William J. Tricarico, Secretary, Federal Communications Commission, Washington, DC 20554 (202) 632-6410.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Federal Communications Commission.

47 CFR Part 1

Administrative practice and procedure, Federal Communications Commission.

Order

In the Matter of amendment to clarify §§ 0.411(b)(2), 0.416, 0.445(b), 0.445(c), 0.445(d) 1.412(a)(1), and 0.430 of the Commission's Rules.

Adopted: February 21, 1986.
Released: February 24, 1986.

By the Commission.

1. By this Order the Commission decides that, commencing immediately, it will begin publishing in the **Federal Register** summaries of most policy statements of general applicability, and Notices of Proposed Rulemaking and Reports and Orders adopted in rulemaking proceedings. The Commission's general practice has been to publish in the **Federal Register** the full

text of all NPRMs, rulemaking decisions, and policy statements. However, due to budgetary constraints and the rising cost of **Federal Register** publication, the Commission has concluded that **Federal Register** publication of detailed summaries in lieu of the full text of Commission decisions will be a reasonable and cost-efficient method of apprising the public of these actions.[1]

2. The published summaries will be sufficiently detailed to inform members of the public of issues raised in a policy statement, or proposed or final rulemaking decision, that might be of particular concern and will advise how copies of the complete decision may be obtained.[2] In proceedings addressing issues of exceptional complexity or magnitude, the Commission may determine that **Federal Register** publication of the full text of particular policy statements or rulemaking decisions will be in the public interest.

3. Current Commission rules call for **Federal Register** publication of Notices of Proposed Rulemaking and other rulemaking "documents." The Commission is clarifying its rules to make explicit that summaries of NPRMs and other rulemaking decisions adopted by the Commission, constitute rulemaking documents for purposes of **Federal Register** publication. *See, e.g.*, 47 CFR 0.411(b)(2), 0.445(c), and 412(a)(1). The Commission will also amend its rules to allow it to publish in the **Federal Register** summaries of policy statements of general applicability. *See* 47 CFR 0.445(d).

4. Section 4(m) of the Communications Act of 1934 provides:

> The Commission shall provide for the *publication of its reports and decisions in such form and manner as may be best adapted for public information and use* and such authorized publication shall be competent evidence of the reports and decisions of the Commission contained in all courts of the United States and of the several States without further proof or authentication thereof.

47 U.S.C. 154(m) (emphasis added). Section 0.445(b) of the Commission's rules implements this mandate by requiring the publication of all final decisions and other documents having precedential or historical significance in the *FCC Reports*. Section 0.445(d) requires the Commission to publish in the **Federal Register** and *FCC Reports* policy statements and interpretations intended to have legal effect and general applicability. Section 0.445(e) provides that documents published in the **Federal Register**, *FCC Reports*, or *Pike and Fischer* may be relied upon by the Commission or any private party in any matter. Documents not published in one of these sources may not be relied upon except as against a party with actual notice.

5. The Commission is also amending §§ 0.416, 0.445(b), 0.445(c), and 0.445(d) of the rules to permit it to reduce the material it publishes in the *FCC Reports*. Consistent with the amended rules, the Commission will publish in the *FCC Reports* only those rulemaking decisions and policy statements summarized in the **Federal Register** and *not* published in *Pike and Fischer*. The Commission believes that these amendments are within the discretion permitted the Commission under section 4(m) to designate the means by which its decisions shall best be made available to the public.[3]

6. Prior notice and public procedures are not required because this action is interpretive and procedural in nature. *See* 5 U.S.C. 553(b)(3)(B), 47 CFR 1.412(b)(3) and (5).

7. Accordingly, it is ordered, pursuant to authority provided by sections 4(i), 4(j), and 303(r) of the Communications Act, 47 U.S.C. 154(i), 154(j) and 303(r), that the Commission's Rules are amended by clarification as indicated in the attached Appendix.

8. It is further ordered that this Order is effective upon publication in the **Federal Register**. *See* 5 U.S.C. 553(d)(2), 47 CFR 1.427(b).

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 0—[AMENDED]

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended by clarification as follows:

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In § 0.411, paragraph (b)(2) is revised to read as follows:

Printed Publications

§ 0.411 General reference materials.

* * * * *

(b)(2) *The Federal Register.* As rules are adopted, amended, or repealed, the changes are published in the **Federal Register**, which is published daily except on legal holidays. Notices of proposed rule making, other rule making documents, statements of general policy, interpretations of general applicability, and other Commission documents having general applicability and legal effect are also published in the **Federal Register**. Summaries of the full Notices of proposed rule making and other rule making decisions adopted by the Commission constitute rulemaking documents for purposes of **Federal Register** publication. The **Federal Register** is fully indexed and contains numerous findings aids.

3. Section 0.416 is revised to read as follows:

§ 0.416 The Federal Communications Commission Reports.

All documents adopted by the Commission having precedential or historical significance that are not published in a nationally distributed, comprehensive reporter of FCC decisions are published in the FCC Reports. The FCC Reports are published monthly in pamphlet form. The pamphlets are available on a subscription basis. Earlier volumes contain Commission decisions and reports but are less comprehensive than those currently being published. Supplements (to those earlier volumes) containing additional documents having precedential or historical significance will be issued from time to time. Current bound volumes contain indexes, tables of cases and other finding aids.

4. In § 0.445, paragraphs (b), (c) and (d) are revised to read as follows:

§ 0.445 Publication, availability and use of opinions, orders, policy statements, interpretations, administrative manuals, and staff instructions.

* * * * *

(b) All final decisions and other documents currently adopted by the Commission having precedential or historical significance are published in the FCC Reports or Pike and Fischer Radio Regulations.

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[1] The Commission will continue Federal Register publication of the actual text of final rule appendices.

[2] The full text of Commission decisions are available on the date of release from the Office of Congressional and Public Affairs. Thereafter, the full texts will be available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC, or as otherwise specified in the summary published in the **Federal Register**. The complete texts of rulemaking decisions and policy statements may also be purchased from the Commission's duplicating contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

[3] *Pike and Fischer* is a private publishing concern currently recognized in § 0.445(e) of the rules as an official reporter of Commission decisions. The Commission will amend its rules to include other sources that enable the Commission to meet its section 4(m) obligations as those reporters are brought to its attention. To enable the Commission to satisfy the requirements of section 4(m), those publications would have to be nationally available and comprehensive reporters of FCC decisions.

(c) All rulemaking documents are published in the **Federal Register**. Summaries of the full Notices of proposed rule making and other rule making decisions adopted by the Commission constitute rulemaking documents for purposes of **Federal Register** publication. See § 1.412(a)(1). The complete text of the Commission decision also is released by the Commission and is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, or as otherwise specified in the rulemaking document published in the **Federal Register**. The complete texts of rulemaking decisions may also be purchased from the Commission's duplicating contractor.

(d) Formal policy statements and interpretations designed to have general applicability and legal effect are published in the **Federal Register**, Pike and Fischer, or the FCC Reports. See §§ 411(b)(2) and 0.416. Commission decisions and other Commission documents not entitled formal policy statements or interpretations may contain substantive interpretations and statements regarding policy, and these are published as part of the document in the FCC Reports or Pike and Fischer. General statements regarding policy and interpretations furnished to individuals, in correspondence or otherwise, are not ordinarily published. A series of individual interpertations may be collected and published in the **Federal Register**, Pike and Fischer, or the FCC Reports.

PART 1—[AMENDED]

5. The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 47 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303.

6. In § 1.412, paragraph (a)(1) is revised to read as follows:

§ 1.412 Notice of proposed rulemaking.

* * * * *

(a)(1) Notice is ordinarily given by publication of a "Notice of Proposed Rule Making" in the **Federal Register**. A summary of the full decision adopted by the Commission constitutes a "Notice of Proposed Rulemaking" for purposes of **Federal Register** publication.

7. § 1.430 is revised to read as follows:

§ 1.430 Proceedings on a notice of inquiry.

The provisions of this subpart also govern proceedings commenced by issuing a "Notice of Inquiry," except that such proceedings do not result in the adoption of rules, and Notices of Inquiry are not required to be published in the **Federal Register**.

[FR Doc. 86-4611 Filed 3-3-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 67

[CC Docket No. 78-72; CC Docket No. 80-286]

MTS and WATS Market Structure; Access Charges and Tariff Provisions

AGENCY: Federal Communications Commission.

ACTION: Delay of effective date.

SUMMARY: This action delays the effective date of the revised separations procedures (Decision and Order FCC 86-6; 51 FR 2708, January 21, 1986) adopted by the Commission concerning the allocation of equal access costs to May 1, 1986. The Commission is taking this action in order to allow the carriers more time to revise their separations procedures and file tariffs to reflect the changes in Part 67 of the Commission's rules. This will result in a more orderly schedule for implementation of these changes.

DATES: This document is effective March 4, 1986. The effective date of Decision and Order FCC 86-6 is delayed until May 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Lynch, Common Carrier Bureau, (202) 632-9342.

Order

In the matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board; CC Docket Nos. 78-72 and 80-286.

Adopted: February 20, 1986.
Released: February 21, 1986.

By the Chief, Common Carrier Bureau.

1. Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West), the Bell Atlantic telephone companies (Bell Atlantic), and Southwestern Bell Telephone Company (Southwestern) have filed petitions seeking an extension of the effective date of the revised separations procedures for equal access costs recently adopted in this Commission's January 7, 1986, *Decision and Order* in this proceeding.[1]

2. In the *Order*, this Commission adopted the Joint Board's recommendations concerning the separations treatment of equal access and network reconfiguration (EANR) costs. In its *Recommended Decision*[2] the Joint Board found that the existing separations procedures for equal access costs resulted in an excessive allocation of costs to the state jurisdiction and recommended that equal access costs, as defined by the Joint Board, be allocated between the state and interstate jurisdictions based on access minutes of use.[3] At the same time, the Joint Board concluded that the existing separations procedures properly allocate network reconfiguration costs, and, therefore, did not need to be changed. In adopting the Joint Board's recommendations, this Commission provided that the changes in the separations procedures for allocation of equal access costs would become effective 30 days after publication of the *Order* in the **Federal Register** i.e., on February 20, 1986.[4]

3. US West states that since their separations data is normally processed on a monthly basis, it would be very expensive for them to make the changes in their accounting system necessary to implement the revised separations procedures in the middle of the month. In addition, US West notes that the new separations changes allocate a greater portion of equal access costs to the interstate jurisdiction than the pre-existing procedures, necessitating the filing of revised access tariffs to recover these increased costs. In light of the fact that the minimum period of public notice for such tariffs filings is 45 days,[5] US West requests that the effective date of the changes in the separations procedures for equal access costs be deferred to April 1, 1986. Bell Atlantic requests an effective date of May 1, 1986, citing the same considerations as US West. Southwestern requests that the Commission defer the effective date of the new separations procedures until March 1, 1986, to avoid the administrative burdens which would be involved in implementing separations changes in the middle of the month. In explaining the very limited nature of the deferral which it requests, Southwestern Bell states that it does not believe that separations changes and implementing

[1] CC Docket Nos. 78-72 and 80-286, 51 FR 2708 (January 21, 1986).

[2] *Recommended Decision and Order*, CC Docket Nos. 78-72 and 80-286, 50 FR 47765 (November 20, 1985).

[3] This measure of relative usage would include all toll usage except BOC intraLATA toll usage.

[4] *Erratum*, CC Docket Nos. 78-72 and 80-286, FCC Mimeo No. 2020, January 16, 1986.

[5] *See* 47 CFR 61.38(c)(2).

tariff revisions must become effective concurrently in all circumstances. However, Southwestern states that it does not object to an extension of the effective date to April 1, 1986, as requested by US West.

4. The Bureau is waiving the implementation of the revised separations procedures for allocation of equal access costs until May 1, 1986, in order to avoid the administrative burdens associated with implementing these separations changes in the middle of the month and to allow the carriers adequate time to file implementing tariff revisions on 45 days' public notice.

5. It is hereby ordered that the implementation of the revised separations procedures for equal access costs adopted by the Commission, is waived until May 1, 1986.

6. It is further ordered, that the Bell Atlantic Petition for Reconsideration, the US West Petition for Waiver and the Southwestern Petition to Defer Effective Date are granted to the extent indicated herein.[6]

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86-4389 Filed 3-3-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 51180-5180]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the reapportionment of amounts of the pollock apportioned to domestic annual processing (DPA) and reserve in the Western/Central Regulatory Area to joint venture processing (JVP) under provisions of the Fishery Management Plan For Groundfish of the Gulf of Alaska (FMP). This action is necessary to provide sufficient pollock as a target species. This reapportionment is intended as a management measure that promotes full utilization of Gulf of Alaska groundfish.

DATES: This notice is effective February 27, 1986. Comments on this action are invited until March 31, 1986.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. The aggregate data upon which this adjustment is based will be available for public inspection during business hours at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The regulations implementing the FMP at § 672.20(c)(ii) authorize the apportionment of surplus amounts of the reserve to domestic annual harvest (DAH) if the Director, Alaska Region, NMFS (Regional Director), after consultation with the North Pacific Fishery Management Council (Council), has determined that these amounts of the reserve will be harvested by domestic fishermen during the remainder of the year. Section 672.20(c)(ii)(3) further authorizes the Regional Director to allocate any increases or decreases in DAH between the DAP and JVP components of DAH. Interim initial specifications for Gulf of Alaska groundfish (51 FR 956, January 9, 1986), were modified later in (51 FR 5198, February 12, 1986).

The Regional Director has determined that an additional 18,000 metric tons (mt) of pollock in the Western/Central Regulatory Area of the Gulf of Alaska will be harvested by JVP fishermen during the remainder of the year and that it is necessary immediately to apportion 15,960 mt from the reserve and 2,040 mt from the DAP component of DAH to JVP in order to avoid disruption of domestic JVP fisheries. He also has determined that the 2,040 mt to be transferred from DAP will not be taken by U.S. DAP fishermen. Consequently, 15,960 mt of pollock in the Gulf of Alaska is transferred from reserve to DAH and allocated to JVP and 2,040 mt of pollock is transferred from DAP to JVP, as shown in the table below. The entire 18,000 mt may be harvested in the area known as Shelikof Strait. The Regional Director takes this action after consultation with the Council. He makes no change in the total allowable level of foreign fishing (TALFF).

TABLE 1.—GULF OF ALASKA REAPPORTIONMENT OF DHA TO RESERVE

[Figures are in metric tons]

	Current	This action	Revised
Pollock:			
Western/Central Regulatory Area (Optimum yield = 305,000):			
Reserve	15,960	−15,960	0
TALFF	40	0	40
DAH	289,000	+15,960	304,960
DAP	204,000	−2,040	201,960
JVP	85,000	+18,000	103,000

Classification

This action is taken under 50 CFR Part 672 and complies with Executive Order 12291.

In view of the need to avoid disruption of domestic fisheries, NOAA has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: February 27, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-4679 Filed 2-27-86; 5:09 pm]

BILLING CODE 3510-22-M

[6] This action is taken pursuant to the authority contained in sections 4 (i) and (j) and 221(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j) and 221(c) (1984).

Proposed Rules

Federal Register
Vol. 51, No. 42
Tuesday, March 4, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708

Merger of Credit Unions; Proposed Revision

AGENCY: National Credit Union Administration (NCUA).

ACTION: Correction to preamble of proposed rule.

SUMMARY: On Thursday, January 30, 1986,a proposed rule entitled "Merger of Credit Unions; Proposed Revision" was published in the **Federal Register** (51 FR 3793). The statement regarding Office of Management and Budget (OMB) clearance of information collection requirements in the regulation was incorrectly published in the proposed rule. This correction is necessary so that an accurate statement may be substituted for the incorrect statement published with the proposed rule on January 30, 1986.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, Office of the General Counsel, at the above address; telephone: (202) 375–1030 or Wilmer A. Theard, Director, Administrative Procedures, at the above address; telephone: (202) 357–1055.

The paragraph entitled Paperwork Reduction Act in the third column on page 3793 of the **Federal Register** dated January 30, 1986, should be deleted and the following paragraph substituted for it:

Paperwork Reduction Act

The proposed rule will be submitted to the Office of Management and Budget for clearance of any information collection requirements that appear therein. Any information collection requirements in the final rule will not take effect until they have been cleared by the Office of Management and Budget. Comments regarding information collection requirements contained in the proposed rule should be forwarded directly to the OMB Desk Officer indicated below: OMB, Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Robert Neal.

Dated: February 22, 1986.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 86–4618 Filed 3–3–86; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–145–AD]

Airworthiness Directives; British Aerospace Viscount Model 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the aircraft hydraulic system cut out valve on British Aerospace (BAe), Aircraft Group, Viscount Model 800 series airplanes. This action is taken as a result of a report of an inadvertent withdrawal of the mechanical nose landing gear downlock on a Viscount Model 700 series airplane, which caused the nose landing gear to collapse. Since the Viscount Model 800 series airplanes use this same part, the potential exists for these airplanes also to be subject to this failure.

DATE: Comments must be received on or before April 28, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–145–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, DC 20041, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–145–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

A recent investigation of a nose gear collapse on a Vickers Viscount 745 D airplane revealed that the collapse was the result of a failure of the cut out valve, in conjunction with a high flow rate in the gear return line. This caused the downlock to withdraw. This same design is also used on the Viscount Model 800 series airplanes.

The FAA issued AD 86–02–05, Amendment 39–5204 (50 FR 53129; December 30, 1985), which requires

modification of the aircraft hydraulic cut out valve on Viscount Model 700 Series airplanes, in accordance with Standard Products Modification Standard SA 3490, dated December 16, 1959. Since the Model 800 series airplanes use the same part as the Model 700 series, the FAA has determined that, in order to preclude the potential for the same type of failure of the cut out valve, a similar modification is necessary for the Model 800.

Since these conditions are likely to exist or develop on other airplanes of this model, an AD is proposed that would require modification of the hydraulic system cut out valve installed on Viscount Model 800 series airplanes, in accordance with Automotive Products Modification Standard SA 3490, dated December 16, 1959.

It is estimated that 2 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $600 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace Viscount: Applies to Vickers Viscount Model 800 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished. To prevent nose landing gear collapse as a result of a faulty hydraulic cut out valve, accomplish the following:

A. Within the next 1,000 hours time-in-service or nine months after the effective of this AD, whichever occurs first, modify the cut out valve, Part Number AIR 41916, in accordance with Automotive Products Modification Standard SA 3490, dated December 16, 1959 (reference BAe Technical News Sheet No. 232, Issue 1, dated August 5, 1985).

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4590 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWP-38]

Proposed Alteration of San Diego, CA, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to alter the San Diego, CA, Terminal Control Area (TCA). It is intended to widen the non-TCA airspace along the California shoreline between La Jolla and Del Mar where general aviation traffic tends to congregate and simplify definition of TCA boundaries for pilots by reference to navigational aid radials where possible. This proposal would also lower the ceiling of the San Diego TCA from 12,500 feet MSL to 10,000 feet MSL; reduce the overall lateral size of the existing TCA; and encompass airspace east and northeast of Miramar Naval Air Station (NAS) to contain high performance aircraft arriving and departing Miramar NAS.

DATES: Comments must be received on or before May 5, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWP-38, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWP-38." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket

both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold an informal airspace meeting in order to receive additional input with respect to the proposal. The meeting place and time is listed below. Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The meeting will begin at 7:00 p.m. (local time). There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space available basis. The FAA representative may accelerate the meeting agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A summary of the comments made at the meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer before distribution. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

Public Meeting Schedule

The schedule for the meeting is as follows:

Date: April 29, 1986, 7:00 p.m. to 10:00 p.m.

Place: Convair Recreation Association Pavilion, 9115 Clairmont Mesa Boulevard, San Diego, CA 92123

Agenda:

7:00 p.m.–7:15 p.m.—Presentation of Meeting Procedures

7:15 p.m.–7:30 p.m.—FAA Presentation of Proposal

7:30 p.m.–10:00 p.m.—Public Presentations and Discussion

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the San Diego TCA as follows:

1. Widen the visual flight rules (VFR) corridor along the California shoreline. The lower and upper altitude limits of the corridor would remain the same (above 3,300 feet MSL, below 4,700 feet MSL). The widening is proposed to help alleviate a potential hazardous condition resulting from the north/south general aviation VFR traffic that tends to congregate in this area.

2. Simplify definition of TCA boundaries by reference to navigational aid radials where possible. This action is intended to aid VFR pilots in discerning boundaries of the TCA for flight operations and flight planning purposes. Except for some dividing lines between areas within the TCA, a few references to runway extensions and control zones, and some references to some arcs referenced to distance measuring equipment (DME), TCA boundaries are defined by radials of very high frequency omni-directional radio range tactical air navigational aid (VORTAC) facilities.

3. Lower the ceiling of the San Diego TCA from 12,500 feet MSL to 10,000 feet MSL. The San Diego area has little comparative overflight activity. Enroute aircraft operations account for less than 5 percent of the traffic in the area. A lowering of the top of the TCA from 12,500 feet MSL to 10,000 feet MSL is not expected to have any operational or safety impacts.

4. Reduce the overall lateral size of the existing TCA. Under the proposal, the lateral size would be reduced without deviating from basic TCA configuration criteria designed to contain all published instrument procedures once an aircraft's flight track enters the TCA. The existing TCA contains 19 subareas (Areas A through S). The proposed TCA contains 17 (Areas A through Q). The southern and western boundaries are unchanged from the existing boundaries.

5. Encompass airspace east and northeast of Miramar NAS to contain high performance aircraft arriving and departing that airport. Miramar NAS is one of the two primary airports in the San Diego TCA. The additional area encompassed into the TCA adds airspace in areas of known hazard to aircraft operating into and out of the primary airports. Over 90 percent of the near midair collision reports received in the San Diego area over the past two years occurred in airspace that will be encompassed in the proposed TCA.

Concurrent with the above modification of the TCA, the FAA plans to cancel the San Diego Terminal Radar Service Area (TRSA). In consideration of the newly configured TCA, as coordinated with local users, a more efficient use of available airspace is effected which makes the TRSA unnecessary.

The proposal to modify the San Diego TCA was originally submitted by Mr. Robert F. Bourque, a San Diego area pilot. Following discussions between FAA representatives and Mr. Bourque, revised proposals were drafted and subsequently circulated to all local FAA air traffic control (ATC) facilities, the U.S. Navy at Miramar NAS and North Island NAS, and the FAA's Terminal Radar Approach Control Facility (TRACON) Advisory Board for comments. All requests for changes were received, including Mr. Bourque's, and a revised plan was presented at the Los Angeles Air Traffic Users Forum and accepted without comment. In addition, local aviation interests were briefed in September of 1985. This proposal was designed based on all of the user input received as a result of the referenced original and altered proposals, meetings, and briefings.

This proposed amendment to the San Diego TCA entails no increase in height of TCA airspace, no impact on air traffic or air navigational facilities, no need for additional equipment or personnel, no change in any IFR arrival or departure routes, no foreseen adverse economic or environmental impact, and no change to flight patterns.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the

Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act

List of Subjects in 14 CFR Part 71

Aviation Safety, Terminal Control Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.401(b) is amended as follows:

San Diego, CA (Revised)

Primary Airports

San Diego, CA, (Linbergh Field), (lat. 32°43'58"N., long. 117°11'14"W.). Miramar NAS, Miramar, CA, (lat. 32°52'30"N., long. 117°08'15"W.).

Boundaries

Based on the Julian (JLI) VORTAC (lat. 33°08'26"N., long. 116°35'06"W.) and Oceanside (OCN) VORTAC (lat. 33°14'26"N., long. 117°25'01"W.).

Southern TCA Boundary

A straight line beginning at the intersection of Julian 185°T(170°M) radial and a point 3 miles north of the Mexico Border to lat. 32°33'07"N., long. 117°30'45"W.

Western Boundary

Eastern edge of Warning Area 291 (W-291).

Area A. That airspace extending upward from 4,800 feet to and including 10,000 feet MSL beginning at the intersection of the Oceanside VORTAC 225°T(210°M) radial and the eastern edge of W-291; then clockwise via the Oceanside 225°T(210°M) radial to intercept the Julian VORTAC 265°T(250°M) radial; then via the Julian 265°T(250°M) radial to intercept the Oceanside 115°T(100°M) radial; then via the Oceanside 115°T(100°M) radial to the Julian 217°T(202°M) radial; then via the Julian 217°T(202°M) radial to the Oceanside 121°T(106°M) radial; then northwesterly via the Oceanside 121°T(106°M) radial to the Julian 247°T(232°M) radial; then southwesterly via the Julian 247°T(232°M) radial to the Oceanside 135°T(120°M) radial; then northwesterly via the Oceanside 135°T(120°M) radial to the Mission Bay VORTAC 008°T(353°M) radial; then southerly via the Mission Bay 008°T(353°M) to a point that intercepts a visual reference to Miramar NAS Runway 28 centerline extended; then via the Runway 28 centerline to intercept the Julian 259°T(244°M) radial; then via the Julian 259°T(244°M) radial to the Oceanside 200°T(185°M) radial; then southerly via the Oceanside 200°T(185°M) radial to the Mission Bay 279°T(264°M) radial; then westerly via the Mission Bay 279°T(264°M) radial to the eastern edge of W-291; then northerly along the eastern edge of W-291 to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the eastern edge of W-291 and the Mission Bay 279°T(264°M) radial; then easterly via the Mission Bay 279°T(264°M) radial to the Oceanside 200°T(185°M) radial; then northerly via the Oceanside 200°T(185°M) radial to the Julian 259°T(244°M) radial; then via the Julian 259°T(244°M) radial to the Oceanside 182°T(167°M) radial; then southerly via the Oceanside 182°T(167°M) radial to the Poggi VORTAC 290°T(276°M) radial; then via the Poggi 290°T(276°M) radial to intercept the extension of the control zone division line that separates Lindbergh Field and North Island NAS; then via this line on an easterly heading to intercept the Oceanside 171°T(156°M) radial; then southerly via the Oceanside 171°T(156°M) radial to the Poggi 279°T(265°M) radial; then westerly via the Poggi 279°T(265°M) radial to the eastern edge of W-291; then northerly along the eastern edge of W-291 to the point of beginning.

Area C. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Oceanside 182°T(167°M) radial and a visual extension of Miramar NAS Runway 28 centerline; then easterly via the Runway 28 centerline extension to intercept the Oceanside 165°T(150°M) radial; then southerly via the Oceanside 165°T(150°M) radial and the Mission Bay 310°T(295°M) radial to Mission Bay; then westerly via the Mission Bay 279°T(264°M) radial to intercept the Oceanside 171°T(156°M) radial; then via the Oceanside 171°T(156°M) radial southerly to intersect the extension of the control zone division line between Lindbergh Field and North Island NAS; then westerly on the extension line to intercept the Poggi 290°T(276°M) radial; then westerly via the Poggi 290°T(276°M) radial to intercept the Oceanside 182°T(167°M) radial; then northerly via the Oceanside 182°T(167°M) radial to the point of beginning.

Area D. That airspace extending upward from 1,500 feet MSL to and including 2,500 feet MSL and that airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Oceanside 165°T(150°M) radial and a visual extension of Miramar NAS Runway 28 centerline; then southeasterly via the Runway 28 centerline to intercept the Mission Bay 008°T(353°M) radial; then southerly via the Mission Bay 008°T(353°M) radial to intersect a visual extension of Montgomery Field Runway 28R centerline; then via the Runway 28R centerline to intercept the Oceanside 165°T(150°M) radial; then northerly via the Oceanside 165°T(150°M) radial to the point of beginning.

Area E. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Mission Bay 008°T(353°M) radial and the Oceanside 135°T(120°M) radial; then southeasterly via the Oceanside 135°T(120°M) radial to the Julian 247°T(232°M) radial; then southwesterly via the Julian 237°T(232°M) radial to the Mission Bay 008°T(353°M) radial; then northerly via Mission Bay 008°T(353°M) radial to the point of beginning.

Area F. That airspace extending upward from the surface to and including 3,200 feet MSL and that airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Mission Bay 008°T(353°M) radial and the visual extension of Miramar NAS Runway 28 centerline; then southeasterly via the Runway 28 centerline to intercept the extension of the control zone separation of Montgomery Field and Miramar NAS; then westerly via this separation line to intercept a visual extension of the Montgomery Field Runway 28 centerline; then via the Runway 28R centerline to intercept the Mission Bay 008°T(353°M) radial; then northerly via the Mission Bay 008°T(353°M) radial to the point of beginning.

Area G. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at the intersection of the Oceanside 135°T(120°M) radial and the Julian 247°T(232°M) radial; then southeasterly via the Oceanside 135°T(120°M) radial to intercept the Mission Bay 070°T(055°M) radial; then southwesterly via the Mission Bay 070°T(055°M) radial to intersect the visual extension of Miramar NAS Runway 10/28 centerline; then via the Runway 10/28 centerline to intercept the Mission Bay 008°T(353°M) radial; then northerly via the Mission Bay 008°T(353°M) radial to the Julian 247°T(232°M) radial; then northeasterly via the Julian 247°T(232°M) radial to the point of beginning.

Area H. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Oceanside 135°T(120°M) radial and the Julian 247°T(232°M) radial; then northeasterly via the Julian 247°T(232°M) radial to intercept the Oceanside 130°T(115°M) radial; then southeasterly via the Oceanside 130°T(115°M) radial to the Poggi 006°T(352°M) radial; then southerly via the Poggi 006°T(352°M) to the Mission Bay 070°T(055°M) radial; then southwesterly via the Mission Bay 070°T(055°M) radial to the Oceanside 135°T(120°M) radial then northwesterly via the Oceanside 135°T(120°M) radial to the point of beginning.

Area I. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Oceanside 130°T(115°M) radial and the Julian 247°T(232°M) radial; then northeasterly via the Julian 247°T(232°M) radial to the Oceanside 121°T(106°M) radial; then southeasterly via the Oceanside 121°T(106°M) radial to the Mission Bay 070°T(055°M) radial; then southwesterly via the Mission Bay 070°T(055°M) radial to the Poggi 006°T(352°M) radial; then northerly via the Poggi 006°T(352°M) radial to the Oceanside 130°(115°M) radial then via the Oceanside 130°T(115°M) radial to the point of beginning.

Area J. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the Mission Bay VORTAC; then northwesterly via the Mission Bay 310°T(295°M) radial to the Oceanside 165°T(150°M) radial; then northerly via the Oceanside 165°T(150°M) radial to the westerly extension of the Montgomery Field Runway 285 centerline; then easterly via the Runway 28R centerline to the separation line between Montgomery Field and Miramar NAS, Control Zones; then via the control zone separation line to the Mission Bay 070°T(055°M) radial; then northeasterly via the Mission Bay 070°T(055°M) radial to the Oceanside 130°T(115°M) radial; then southeasterly via the Oceanside 130°T(115°M) radial to the Julian 204°T(189°M) radial; then southerly via the Julian 204°T(189°M) radial to the Mission Bay 099°T(084°M) radial; then westerly via the Mission Bay 099°T(084°M) radial to the point of beginning.

Area K. That airspace extending upward from 5,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Mission Bay 070°T(055°M) radial and the Oceanside 121°T(106°M) radial; then southeasterly via the Oceanside 121°T(106°M) radial to the Julian 185°T(170°M) radial; then southerly via the Julian 185°T(170°M) radial to intersect a line that is 3 NM north and parallel to the U.S./Mexican Border; then westerly via this line to the Julian 204°T(189°M) radial; then northerly via the Julian 204°T(189°M) radial to the Oceanside 130°T(115°M) radial; then northwesterly via the Oceanside 130°T(115°M) radial to intercept the Mission Bay 070°T(055°M) radial; then northeasterly via th Mission Bay 070°T(055°M) radial to the point of beginning.

Area L. That airspace extending upward from the surface to 10,000 feet MSL beginning at the intersection of the Oceanside 171°T(156°M) radial and the Mission Bay 279°T(264°M) radial; then easterly via the Mission Bay 279°T(264°M) radial and the Mission Bay 099°T(084°M) radial to the Mission Bay 10 DME, then clockwise via the Mission Bay 10 DME arc to the Poggi 300°T(286°M) radial; then northwesterly via the Poggi 300°T(286°M) radial to intersect the division line that separates the Lindbergh Field and North, Island NAS, Control Zones; then westerly along this line extended to intercept the Oceanside 171°T(156°M) radial; then northerly via the Oceanside 171°T(156°M) radial to the point of beginning; excluding (VFR Corridor) that airspace from 3,300 feet to 4,700 feet MSL in an area beginning at the Mission Bay VORTAC; then southeasterly on a line direct to the Hotel del Coronado (south end of Coronado Island); then via the Silver Strand Boulevard to the Mission Bay 10 DME; then counterclockwise via the Mission Bay 10 DME to intersect Interstate 5 (I-5); then northerly via I-5 to the intersection of Highway 94; then on a northerly heading direct to the intersection of the interchange of I-5 and I-805 to intersect the Mission Bay 099°T(084°M) radial; then westerly via Mission Bay 099°T(084°M) radial to Mission Bay to the point of beginning.

Area M. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL beginning at the Mission Bay 099°T(084°M) radial/10 DME; then easterly via the Mission Bay 099°T(084°M) radial to the Mission Bay 13 DME; then clockwise via the 13 DME arc to the Poggi 300°T(286°M) radial; then via the Poggi 300°T(286°M) radial to the Mission Bay 10 DME; then northerly via the 10 DME arc to the point of beginning.

Area N. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the Mission Bay 099°T(084°M) radial/13 DME; then easterly via the Mission Bay 099°T(084°M) radial to the Mission Bay 15 DME; then clockwise via the Mission Bay 15 DME arc to the Poggi 300°T(286°M) radial; then via the Poggi 300°T(286°M) radial to the Mission Bay 13 DME; then northerly via the 13 DME to the point of beginning.

Area O. That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL beginning at the Mission Bay 099°T(084°M) radial/15 DME; then easterly via the Mission Bay 099°T(084°M) radial to the Julian 204°T(189°M) radial; then southerly via the Julian 204°T(189°M) radial to intersect a line that is 3 NM north and parallel to the U.S./Mexican Border; then westerly via this line to the Poggi 120°T(106°M) radial; then northwesterly via the Poggi 120°T(106°M)/300°T(286°M) radial to the Mission Bay 15 DME; then northerly via the Mission Bay 15 DME to the point of beginning.

Area P. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Poggi 279°T(265°M) radial and the eastern edge of W-291; then easterly via the Poggi 279°T(265°M) radial to intercept the Mission Bay 10 DME; then northeasterly via the Mission Bay 10 DME to the Poggi 300°T(286°M) radial; then southeasterly via the Poggi 300°T(286°M)/120°T(106°M) radial to intercept a line that is 3 NM north and parallel to the U.S./Mexican Border; then westerly via this line to the eastern edge of W-291; then northerly via the eastern edge of W-291 to the point of beginning.

Area Q. That airspace extending upward from 2,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Oceanside 171°T(156°M) radial and an extension of the division line separating the Lindbergh Field and North Island NAS, Control Zones; then easterly along that division line to intercept the Poggi 300°T(286°M) radial; then southeasterly via the Poggi 300°T(286°M) radial to intercept the Mission Bay 10 DME; then clockwise via the Mission Bay 10 DME arc to intercept the Poggi 279°T(265°M) radial; then westerly via the Poggi 279°T(265°M) radial to the Oceanside 171°T(156°M) radial; then northerly via the Oceanside 171°T(156°M) radial to the point of beginning, excluding airspace of the VFR Corridor (See Area "L").

Issued in Washington DC on February 26, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-4591 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Social Security Benefits; U.S. Residence Requirements for Non-Resident Aliens and Deductions for Work Outside the U.S.

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Social Security Administration (SSA) proposes to amend two regulations on paying benefits to persons living or working outside the United States (U.S.). The first amendment would provide that more than 45 hours of remunerative activity performed in a month outside the U.S. by an old-age beneficiary will cause deductions to be made from the benefits of dependents either entitled on or deemed entitled on that old-age beneficiary's earnings record. This amendment reflects section 2661(g)(1) of Pub. L. 98–369, which was effective for foreign work performed by the old-age beneficiary beginning in September 1984. The second amendment would provide that an alien beneficiary who is outside the U.S. for more than 6 consecutive months and who would otherwise be paid dependent's or survivor's benefits under certain existing provisions must also satisfy a length-of-U.S.-residence requirement in order to be paid these benefits. The amendment reflects section 340 of Pub. L. 98–21, which was effective for aliens first eligible for dependent's or survivor's benefits after December 1984.

DATE: Comments must be received on or before May 5, 1986.

ADDRESS: Comments should be submitted to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203 or delivered to the Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during those same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: C.H. Campbell, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597–3408.

SUPPLEMENTARY INFORMATION: These proposed amendments would revise two SSA regulations for paying benefits to persons living outside the U.S. and to persons entitled (or deemed entitled) to benefits on the earnings records of persons engaged in non-covered work outside the U.S. Both proposed amendments reflect amendments to the Social Security Act (the Act). The provisions of these proposed amendments are as follows:

I. Foreign Work Test

We propose to amend the foreign work test described in section 404.417. The term "foreign work test" means the amount of noncovered work a Social Security beneficiary can perform while outside the U.S. before we make deductions from his or her benefits and from the benefits of dependent beneficiaries entitled or deemed entitled on his or her earnings record. The foreign work test deductions apply to the beneficiary who is entitled to benefits under title II of the Act and who performs non-covered outside the U.S. unless he or she is—

(a) Age 70 or older; or

(b) Receiving—

(1) Disability insurance benefits; or

(2) Child's, widow's or widower's benefits based on disability.

The foreign work test deductions also apply to dependent's benefits when the person (who is under age 70) on whose earning's record the dependent is entitled (or deemed entitled) engages in non-covered work outside the U.S. However, the dependent's deductions based on that worker's activity do not apply to wife's or husband's benefits that are payable beginning with January 1985 to a spouse divorced for at least 2 years from a worker who is either eligible for, or is receiving old-age benefits. (See 50 FR 5264 published in the **Federal Register** on February 7, 1985.)

We propose to amend paragraph (b) of § 404.417 by providing that SSA will make deductions from a dependent beneficiary's benefits for a month if the old-age beneficiary on whose earnings record the dependent is entitled or deemed entitled works "in excess of 45 hours" in that month. This amendment implements section 2661(g)(1) of Pub. L. 98–369—"The Deficit Reduction Act of 1984"—which changed, beginning with September 1984, the monthly foreign work test applied to dependent beneficiaries in the case of work by the old-age beneficiary from a 7-day test to an "in excess of 45 hours" test. This change affects the following categories of dependent beneficiaries: (1) A beneficiary entitled to wife's, husband's (unless a divorced spouse as previously described), or child's benefits on the earnings record of an old-age beneficiary when the old-age beneficiary performed the work; and (2) A beneficiary, who is married to an old-age insurance beneficiary who performed the foreign work but who is entitled on someone else's earnings record to mother's or father's benefits or child's benefits based on disability.

This amendment would correct an anomalous situation created when section 203(c) of the Act was amended by enactment of section 309(g) of Pub. L. 98–21—"The Social Security Amendments of 1983" on April 20, 1983. Section 309(g) substitutes the "in excess of 45 hours" work test for a 7-day work test in section 203(c) of the Act. It applies to benefits payable for months beginning with *May 1983*. However, because section 203(d) of the Act was not amended along with section 203(c), this new foreign work test applied in imposing deductions from the working beneficiary's benefits, but did not apply in imposing deductions from the benefits of that beneficiary's dependents on account of that beneficiary's work. Thus, an "in excess of 45 hours" test applied when making deductions from the old-age beneficiary's benefits while a 7-day foreign work test applied when making deductions from the dependent's benefits. This situation was corrected by enactment of section 2661(g)(1) of Pub. L. 98–369 on July 18, 1984 which amended section 203(d) of the Act to also provide an "in excess of 45 hours" foreign work test for deductions from dependents' benefits effective for months beginning with *September 1984*. While the "in excess of 45 hours" foreign work test now applies in determining whether to impose deductions on the benefits of both the old-age beneficiary and that person's dependents (based on the old-age beneficiary's work), this proposed regulation reflects different effective dates for the two categories of beneficiaries because of the different effective dates of the two legislative amendments.

II. U.S. Residence Requirements—Alien Outside the U.S.

(a) Aliens to Whom These Residence Requirements Apply

This amendment would set forth an added requirement for paying Social Security dependent's or survivor's benefits to a person who is not a U.S. citizen or U.S. national (hereinafter referred to as an alien) and who is outside of the United States for more than 6 consecutive months. It reflects

section 340 of Pub. L. 98–21—"The Social Security Amendments of 1983"—which added paragraph (11) to section 202(t) of the Act, providing a length-of-U.S.-residence-requirement for paying dependent's or survivor's benefits to certain aliens who are first eligible after December 1984. The statute and the proposed regulation amendment impose the residence requirement on an alien who would otherwise be paid benefits under section 202(t)(2) or of the Act because he or she—

1. Is a citizen of a country which has a pension or social insurance system of general application that pays periodic benefits because of old-age, retirement, or death to qualified U.S. citizens even though they are not citizens of and do not reside in such country; or

2. Is entitled to benefits on the earnings record of a worker who—

a. Resided in the U.S. for a period, or periods, of 10 or more years;

b. Earned 40 or more quarters of coverage; or

c. Worked in employment covered by the Railroad Retirement Act while in the U.S. and the work is treated as employment covered by the Social Security Act; or

3. Is outside the U.S. because he or she is in the active military or naval service of the U.S.

(b) U.S. Residence Requirements Apply Only to Dependent's and Survivor's Benefits

Under this proposed rule, the U.S. residence requirement is a requirement that must be met by aliens entitled to dependent's or survivor's benefits but not those entitled to old-age or disability insurance benefits. Paragraph (c) of section 340 of Pub. L. 98–21 (the effective date provisions) states that the "length of U.S. residence" provision applies to benefits payable under *sections 202 and 223 of the Act,* which, read literally, would include old-age and disability insurance benefits. However, the section 202(t)(11) provisions of the Act added by sec. 340(a)(2) of Pub. L. 98–21 exclusively apply the new U.S. residence requirement to dependent and survivor beneficiaries, i.e., those entitled to benefits under section 202(b), (c), (d), (e), (f), (g) and (h) of the Act. Thus, it is clear that Congress intended to exclude old-age and disability insurance beneficiaries from these provisions.

(c) The U.S. Residence Requirements for Payment of Dependent's and Survivor's Benefits

The U.S. residence requirements apply to those aliens outside the U.S. who are first eligible for dependent's or survivor's benefits after December 31, 1984. For each dependent's or survivor's benefit, the U.S. residence requirement is as follows:

(1) To be paid a child's benefit—

(i)(A) The alien must have resided for 5 or more years in the U.S. as the child of the worker on whose earnings record benefit entitlement exists; or

(B) The worker on whose earnings record the benefit entitlement exists and the other parent, if any, must each have either resided in the U.S. for 5 or more years or died while residing in the U.S.; and

(ii) If the alien is entitled as an adopted child, the alien must have been adopted within the U.S. by the worker on whose earnings record benefit entitlement exists and have lived in the U.S. with, and received one-half support from, that worker for a period (beginning prior to the age of 18) of at least one year's duration, immediately preceding the month in which the worker became disabled, eligible for benefits, or died (whichever occurred first).

Note.—We define "other parent" in this proposed regulation as that term relates to the requirement that both parents of the child (i.e., worker and other parent) must have either resided for 5 years in or died in the U.S. for the child to be paid benefits if that child does not meet the 5-year U.S. residence requirement. "Other parent" will mean the parent who is of the opposite sex of the worker and who is either: (1) An adoptive parent by whom the child was adopted before the child attained age 16 and who is or was the spouse of the person on whose earnings record the child is entitled, (2) the natural mother or father of the child, or (3) the step-parent of the child by marriage to the worker prior to the child's attainment of age 16. If the child has more than one "other parent", the requirement is met if any one of them satisfies the U.S. residence requirement.

(2) To be paid a wife's, husband's, widow's, widower's, divorced wife's, divorced husband's, surviving divorced wife's, surviving divorced husband's, surviving divorced mother's, or surviving divorced father's benefit, the alien must have had a spousal relationship with the worker for 5 or more years while residing in the U.S.

(3) To be paid a parent's benefit, the alien must have resided in the U.S. as the parent of the worker for 5 or more years.

(d) Aliens Exempted From These Residence Requirements

The alien is exempt from the U.S. residence requirement if he or she is—

1. A citizen or resident of a country with which the U.S. has concluded a Social Security totalization agreement which is in force (see section 233 of the Social Security Act), in which case the totalization agreement provisions govern whether this U.S. residence requirement applies;

2. A national of a country with which the U.S. had a treaty in effect on August 1, 1956 and the U.S. residence requirements would be contrary to the terms of such treaty; or

3. Entitled to benefits on the earnings record of a worker who died while in the U.S. Armed Forces or as the result of a service connected disease or injury.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet the criteria for a major rule because they will not have an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

These proposed regulations do not impose recordkeeping or reporting requirements on the public.

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they will affect only individuals. Therefore, a regulatory flexibility analysis as provided by Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 13.803 Social Security Retirement Insurance; No. 13.805 Social Security Survivor's Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability Benefits, Old-Age, Survivors, and Disability Insurance.

Dated: October 7, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: January 9, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Part 404 of Chapter III, title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 202, 203, 205, and 1102, 49 Stat. 623, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorg. Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 402, 403, 405, and 1302.

2. In § 404.417, paragraph (b) is revised to read as follows:

§ 404.417 Deductions because of noncovered remunerative activity outside the United States; 45-hour and 7-day work test.

* * * * *

(b) *Deductions from benefits because of the earnings or work of an insured individual*—(1) *Prior to September 1984.* Where the insured individual entitled to old-age benefits works for 7 or more days in a month prior to September 1984 while under age 72 (age 70 after December 1982), a deduction is made for that month from any:

(i) Wife's, husband's, or child's insurance benefit payable on the insured individual's earnings record; and

(ii) Mother's, father's, or child's insurance benefit based on child's disability, which under § 404.420 is deemed payable on the insured individual's earnings record because of the beneficiary's marriage to the insured individual.

(2) *From September 1984 on.* Effective September 1984, a benefit deduction is made for a month from the benefits described in paragraph (b)(1) of this section only if the insured individual, while under age 70, has worked in excess of 45 hours in that month.

(3) *Amount of deduction.* The amount of the deduction required by paragraph (b) of this section is equal to the wife's, husband's or child's benefit.

(4) *From January 1985 on.* Effective January 1985, no deduction will be made from the benefits payable to a divorced wife or a divorced husband who has been divorced from the insured individual for at least 2 years.

3. In § 404.460, paragraph (d) is added which reads as follows:

§ 404.460 Nonpayment of monthly benefits of aliens outside the United States.

* * * * *

(d) *Nonpayment of monthly benefits to certain aliens entitled to dependent's or survivor's benefits.* An individual who, after December 31, 1984, becomes eligible for dependent's or survivor's benefits for the first time on the earnings record of the worker, is an alien, has been outside the United States for more than 6 consecutive months, and is qualified to receive a monthly benefit by reason of the provisions of paragraphs (b)(2), (b)(3), (b)(5), or (b)(7) of this section, must also meet a U.S. residence requirement described in this section to receive benefits:

(1) An alien entitled to benefits as a dependent or surviving child—

(i) Must have resided in the U.S. for 5 or more years as the child of the parent on whose earnings record entitlement is based; or

(ii) The parent on whose earnings record the child is entitled and the other parent, if any, must each either resided in the United States for 5 or more years or died while residing in the U.S.

(2) an alien entitled to benefits as a dependent or surviving child based on an adoptive relationship must meet the requirements of paragraph (d)(1) of this section and—

(i) Have been adopted within the United States by the worker on whose earnings record the child's entitlement is based; and

(ii) Have lived in the United States with, and received one-half support from, the worker for a period, beginning prior to the child's attainment of age 18, of (A) at least one year immediately before the month in which the worker became eligible for old-age benefits or disability benefits or died (whichever comes first), or (B) if the worker had a period of disability which continued until the worker's entitlement to old-age or disability benefits or death, at least one year immediately before the month in which that period of disability began.

(3) An alien entitled to benefits as a spouse, surviving spouse, divorced spouse, surviving divorced spouse, or surviving divorced mother or father must have resided in the United States for 5 or more years while in a spousal relationship with the person on whose earnings record the entitlement is based. The dependent's or survivor's spousal relationship over the required period can be that of wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, or a combination of two or more of these categories.

(4) An alien who is entitled to parent's benefits must have resided in the United States for 5 or more years as a parent of the person on whose earnings record the entitlement is based.

(5) Individuals eligible for benefits before January 1, 1985 (including those eligible for one category of benefits on a particular worker's earnings record after December 31, 1984, but also eligible for a different category of benefits on the same worker's earnings record before January 1, 1985), will not have to meet the residency requirement.

(6) Definitions applicable to paragraph (d) of this section are as follows:

"Eligible for benefits" means that an individual satisfies the criteria described in Subpart D of this Part for dependent's or survivor's insurance benefits at a particular time except that the person need not have applied for those benefits at that time.

"Other parent" for purposes of paragraph (d)(1)(ii) of this section means any other living parent who is of the opposite sex of the worker and who is either: The adoptive parent by whom the child was adopted before the child attained age 16 and who is or was the spouse of the person on whose earnings record the child is entitled; the natural mother or natural father of the child; or the step-parent of the child by a marriage, contracted before the child attained age 16, to the natural or adopting parent on whose earnings record the child is entitled.

Note.—Based on this definition, a child may have more than one living "other parent." However, the child's benefit will be payable for a month if in that month he or she has one "other parent" who had resided in the U.S. for at least 5 years.

"Resided in the United States" for satisfying the residency requirement means presence in the United States with the intention of establishing at least a temporary home. A period of residence begins upon arrival in the United States with that intention and continues so long as an attachment to an abode in the United States is maintained, accompanied by actual physical presence in the United States for a significant part of the period, and ending the day of departure from the United States with the intention to reside elsewhere. The period need not have been continuous and the requirement is satisfied if the periods of U.S. residence added together give a total of 5 full years.

(7) The provisions described in paragraph (d) of this section shall not apply if the beneficiary is a citizen or resident of a country with which the United States has a totalization agreement in force, except to the extent provided by that agreement.

[FR Doc. 86-4571 Filed 3-3-86; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[LR-66-85]

Tax Shelter Registration

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal

egister, the Internal Revenue Service is suing temporary regulations relating to x shelter registration. The text of those mporary regulations also serves as the mment document for this proposed lemaking.

ATES: Written comments and requests r a public hearing must be delivered y May 5, 1986. The amendments are roposed to be effective generally with spect to tax shelters in which any terest is first sold after August 31, 984.

DDRESS: Send comments and requests r a public hearing to: Commissioner of ternal Revenue, Attention: CC:LR:T R-66-85), Washington, DC 20224.

OR FURTHER INFORMATION CONTACT: aulette Chernyshev, Office of Chief ounsel, Internal Revenue Service, 1111 onstitution Avenue, NW, Washington, C 20224 (Attention: CC:LR:T) telephone 2-566-3288 (not a toll-free call).

UPPLEMENTARY INFORMATION:

ackground

The temporary regulations esignated by a "T" following the ction citation) in the Rules and gulations portion of this issue of the ederal Register amend Parts 301 and 2 of Title 26 of the Code of Federal gulations. These amendments change e rules relating to tax shelter gistration under section 6111 of the ternal Revenue Code of 1954, as added section 141 of the Tax Reform Act of 84 (Pub. L. 98-369, 98 Stat. 678). For e text of the temporary regulations, e FR Doc. 86-4683 (T.D. 8078) blished in the Rules and Regulations rtion of this issue of the **Federal** gister. The preamble to the temporary gulations provides a discussion of the es. The final regulations, which this cument proposes to base on those mporary regulations, would amend rts 301 and 602 of Title 26 of the Code Federal Regulations.

ecutive Order 12291; Regulatory xibility Act

The Commissioner of Internal venue has determined that this posed rule is not a major rule as fined in Executive Order 12291 and t a Regulatory Impact Analysis is refore not required.

Although this document is a notice of posed rulemaking that solicits public mments, the Internal Revenue Service s concluded that the regulations posed herein are interpretative and t the notice and public procedure irements of 5 U.S.C. 553 do not ly. Accordingly, these proposed lations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these regulations is Paulette Chernyshev of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86-4682 Filed 3-3-86; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-2976-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous five wastes generated during the production of tetaethyl and tetramethyl lead, and from the formulation of mixed alkyl lead compounds. The effect of this proposed rule, if promulgated, is that all of these wastes woud be subject to regulation as hazardous under 40 CFR Parts 262-266, and Parts 270, 271, and 124.

DATES: EPA will accept public comments on this proposed rule until April 18, 1986. Any person may request a hearing on this amendment by filing a request with Eileen B. Claussen, whose address appears below, by March 19, 1986.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. Comments should identify the regulatory docket "Listing Alkyl Lead." Requests for a hearing shoud be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

The public docket for this amendment is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Richard L. Dailey, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7738.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published a list of hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. EPA today is proposing to amend this list by adding five wastes that are generated during the production of tetraethyl and tetramethyl lead compounds, and from the formulation of mixed alkyl leads. These hazardous wastes, generated by the processes described below, are wastewaters, process and combined plant wastewater sludges, slags, and flue dusts.

As derived from industry-supplied data and from EPA-sponsored sampling and analysis of the specific wastes, these wastes typically contain significant concentrations of one or more hazardous constituents of concern which include carcinogenic and otherwise chronically and acutely toxic organic and inorganic compounds (USEPA, 1983a, 1983b, 1984a). Table I (below) lists the constituents of concern, their ranges of concentrations in the wastes, their exposure pathways of concern, their mobilities in soil, their persistence in the media of concern, and such factors as water solubility, long octanol/water partition coefficients (k_{ow}), and soil absorption co-efficients (k_{oc}) that enable the Agency to estimate a chemical's mobility and persistence in the environment. Table I also lists the various salts of lead that may form upon disposal. Using the data supplied in Table I, and having evaluated these wastes against the criteria for listing hazardous wastes as provided in 40 CFR 261.11(a)(3), EPA has determined that these wastes are hazardous because they are capable of posing a substantial present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of, or othewise managed.

II. Summary of the Regulation

A. List of Wastes

This proposed regulation would list as hazardous the following wastes that are generated in conjunction with the manufacture of tetramethyl and tetramethyl lead, and from the formulation of mixed alkyl leads:

K127—Recovery furnace slag and flue dust from the sodium-lead alloy alkyl lead process.

K128—Combined process wastewaters from the sodium-lead alloy alkyl lead process.

K129—Wastewater treatment sludges from the sodium-lead alloy alkyl lead process.

K130—Wastewater treatment sludges resulting from the combined treatment of facility wastewaters, which include, but are not limited to, wastewaters from the sodium-lead alloy alkyl lead process.

K135—Washwater from the formulation of mixed alkyl leads.

In 1983, three domestic companies produced alkyl lead compounds at three locations, with a total annual production capacity of 203,000 kkg.[1] In addition, two domestic companies engaged in the formulation of mixed alkyl lead compounds at two locations in 1983. Their total production capacity is confidential business information (CBI). Based on this information, however, we are able to estimate the total volume of residual waste generated during the production of alkyl lead compounds and from the formulation of mixed alkyl leads by the processes described here at greater than 2 million kkg per year.[1] (The volume of waste generated for each waste stream is claimed to be CBI.) These wastes are formed as residuals at several points in the production of alkyl lead compounds and the formulation of mixed alkyl leads.

Alkyl lead production may either be conducted in a continuous or on a batch basis. The two processes by which alkyl leads are produced are as follows.

1. Reaction of a sodium-lead alloy with either methyl or ethyl chloride to form either tetramethyl or tetraethyl lead.

2. Electrolysis of an organomagnesium (Grignard) reagent containing either methyl or ethyl moieties in the presence of elemental lead to form either tetramethyl or tetraethyl lead.

Currently, the Grignard electrolysis process generates one residual, waste oil from electrical equipment and storm-water skimmings, that could be listed as hazardous. The Agency has chosen, however, to list this waste stream under a separate rule; this rulemaking was proposed on November 29, 1985 (see 50 FR 49212).

The method used for formulations of mixed alkyl leads is:

Reaction of a mixture of tetraethyl and tetramethyl lead in the presence of a Lewis acid catalyst to form a mixture of tetramethyl, trimethylethyl, diethyldimethyl, triethylmethyl, and tetraethyl lead compounds.

The wastes proposed for listing today are formed at a number of points in the production of alkyl lead compounds by the sodium-lead alloy process and in the formulation of mixed alkyl leads. The recovery furnace slag and flue dust (K127) are generated during the recovery of lead that is not consumed by the sodium-lead alloy reaction. The combined process wastewaters (K128) arise from washing the product of the sodium-lead alloy reaction, from scrubbing the wastewaters, from lead recovery dewatering, from lead recovery furnace caustic wastewaters, and from surface runoff associated with the sodium-lead alloy process. The process wastewater sludges (K129) arise from the settling of suspended solids from the process wastewaters. The combined plant wastewater treatment sludges (K130) result from the combined treatment of various discrete plant process wastewaters which include, but are not limited to, wastewaters from lead alkyl production. The washwater from the formulation of mixed alkyl leads (K135) is generated from washing the mixed alkyl lead product to remove water-soluble impurities.

The listing background document (available from the public docket at EPA Headquarters—see "ADDRESSES" section—and from the EPA Regional Libraries) and the sources cited there describe these processes in detail. Sections of the background document, however, are confidential business information (CBI); these CBI sections are not available to the public.

Most of the wastes proposed to be listed are disposed. However, one of the wastes that is proposed to be listed—namely, K129—is primarily recycled by being reclaimed.[2] The Agency believes that this recycling activity could raise the question of whether or not this residue should be defined as a solid waste when reclaimed. In particular, on January 4, 1985, the Agency issued a final rule which specifies which materials are solid and hazardous wastes when they are recycled. See 50 FR 614. (This rulemaking also specified general and specific management standards for most types of hazardous waste recycling activities.) Among other things, the rule indicates that all spent materials[3] (whether they are listed or

[1] The Agency recently learned that one of the manufacturers of alkyl leads has stopped production as a result of the declining market for leaded gasoline caused by EPA's lead phase-down rule. Because the manufacturer is reported to be dismantling its production facility, the Agency expects that production capacity to be permanently lost.

[2] Another waste—namely, recovery furnace slag and flue dust (K127)—is generated at a rate of approximately 15 million pounds per year. Of this total, approximately one million pounds (or 7.5 percent) is recycled by being reclaimed. The Agency believes that since such a small amount of this waste is being reclaimed, this stream is more like a waste than like a product. Additionally, this waste undergoes substantial reprocessing at an off-site facility, and thus is not reclaimed by a closed-loop type of system.

[3] A spent material is any material that has been used and, as a result of contamination, can no

Continued

exhibit one or more of the hazardous waste characteristics) are defined as solid wastes when they are reclaimed. Sludges and by-products, on the other hand, are defined as solid wastes when they are reclaimed only if they are specifically listed.[4] [5] We limited the definition to listed sludges and by-products to avoid including sludges and by-products that are routinely processed to recover usable products as part of on-going production operations. Nevertheless, sludges and by-products that are routinely reclaimed can be listed (and thus be defined as a solid waste) if they are more like a waste than like a product. This determination is made by EPA on a material-by-material basis. The relevant factors that EPA will consider are:

- How frequently the material is recycled on an industry-wide basis;
- Whether the material is replacing a raw material and the degree to which it is similar in composition to the raw material;
- The relation of the recovery practice to the principal activity of the facility; and
- Whether the secondary material is managed in a way to minimize loss. See 50 FR 641.

Based on EPA's survey of the industry, all of waste K129 is recycled by being reclaimed. This material is recycled, however, only after it has been stored for long periods of time, usually for at least one year. In addition, and more importantly, these sludges are not stored in a way commensurate with designation as products; rather, they are stored in an insecure fashion without significant attempt to minimize loss. These sludges are stored in surface impoundments. As the Agency stated during the solid waste definition rulemaking, the Agency simply does not believe that hazardous sludges that are stored underwater in enormous holes in the ground are being handled like products or like valued new materials. Indeed, surface impoundments containing hazardous secondary materials (as well as hazardous wastes) pose a particular threat of contaminating ground water, and have always been one o the chief concerns of the hazardous waste management program. Not only is containment without a liner system probably impossible, but materials are constantly in the presence of liquids, creating the situation most conducive to forming leachate. Since most impoundments are unlined, and many are underlain by permeable soils, the potential for downward seepage of contamianted fluids into ground water is high.[6]

Furthermore, it should be noted that in granting variances from classification as a solid waste, one of the factors the Agency will consider is the extent to which handling the material (before being reclaimed) is designed to minimize loss. See 40 CFR 260.31(a)(4); 260.31(b)(3); and 260.31(c)(5). Where the materials are stored in open unlined piles, *unlined impoundments*, or leaking tanks and drums, it is less likely a variance will be granted (*i.e.*, the more carefully a material is handled, the more it is commodity-like). See 50 FR 654, 655. Additionally, these sludges undergo a significant amount of reprocessing before the resulting end product (lead) can be used as a raw starting material in the production of alkyl leads. The reprocessing steps or this waste consist of physically dewatering and drying the sludge, which is then sent to an on-site pyrometallurgical furnace for initial lead recovery. This refined waste is subsequently sent to an off-site commercial secondary lead smelter for final lead recovery. This amount of reprocessing indicates that the proposed waste is not recycled in a closed-loop process, as defined in 40 CFR 261.2(e)(iii). See 50 FR 664, 1985. We, therefore, believe that although most if not all of this material is reclaimed, it should be listed as a solid waste.

1. Concentrations of Hazardous Constituents in Wastes

As derived from industry-supplied data and from EPA-sponsored sampling and analysis, these wastes typically contain significant concentrations of one or more of the following hazardous constituents: lead or lead salts, tetraethyl lead, ethylene dibromide, or ethylene dichloride. In particular, lead is found in concentrations ranging approximately from 150 to 500,000 ppm, tetraethyl lead from around 1000 to 20,000 ppm, and ethylene dibromide and ethylene dichloride are both present at maximum concentrations of between 2500 and 5000 ppm. Table I lists the constituents of concern in each waste stream along with their effects of concern, the concentrations expected in the wastes, exposure pathways of concern, their mobilities in soil, their persistence in the medium of concern, and such factors as water solubility, log octanol/water partition coefficient (K_{ow}), and soil absorption partition coefficient (K_{oc}); these data will enable the Agency to estimate a compound's mobility and persistence in the environment. Table I also provides data for some salts of lead that may be expected to form in the environment.

2. Effects of Concern

These hazardous constituents have carcinogenic or other chronic systemic effects in laboratory animals and/or humans. For example, lead, which has been known to be toxic since antiquity, is present in all of the wastes in levels ranging from 150–500,000 ppm, and is chronically toxic, causing neurological and hematopoietic effects (Casarett and Doull, 1980). Chronic exposure to inorganic lead also causes renal damage (Clarkson and Kench, 1956; Chisolm, 1968; Cramer *et al.*, 1974; Weeden *et al.*, 1975), cerebrovascular disease (Dingwall-Fordyce and Lane, 1963), heart failure (Kline, 1960), electrocardiographic abnormalties (Kosminder and Pentelenz, 1962), possible impaired liver function (Dodic *et al.*, 1971), impaired thyroid function (Sanstead *et al.*, 1969), intestinal colic (Beritic, 1971), and miscarriage and stillbirths (Lane, 1949; Nogaki, 1958). All of these effects occurred in humans as a result of exposure to lead.

longer serve the purpose for which it was produced without processing. See 40 CFR 261.1(c)(1); see also preamble discussion in 50 FR 624, January 4, 1985.

[4] Under the recycling rules, the recycled process wastewater sludges would be defined as a sludge.

[5] Non-listed sludges and by-products that are recycled would be defined as solid wastes if they are accumulated speculatively. A material is accumulated speculatively if it is accumulating before being recycled, unless a person can demonstrate that the material has recycling potential and feasibilitty, and durign a one-year calendar period, the amount of material recycled, or transferred to a different site for recycling, is at least 75 percent of the amount accumulated at the beginning of the year.

[6] See U.S. EPA, Report to Congress, *Surface Impoundments and Their Effect on Ground Water Quality in the United States—A Preliminary* Survey, EPA section 7019–78–004 (1978); see also U.S. EPA, *The Prevalence of Subsurface Migration of Hazardous Chemical Substances at Selected Industrial Waste Disposal Sites*, EPA/5301 SE 6341 (October, 1977).

TABLE I—CHARACTERIZATION OF WASTE STREAMS

Waste and const. of concern	Effects of concern	Range of conc. (ppm)	Exposure pathway of concern	Water sol. (mg/L)	Soil mobility [1]	Log Koc [2]	Log Koc [2]	Persistence in groundwater [1]
K127 Rec. Furn. Dust and Slag:								
Lead	Chron. Tox	150,000 to 300,000	gw	1	Mod	[3]	[3]	Indefinite.
Lead Acetate [4]	Chron. Tox	150,000 to 300,000	gw	385,000	High	[3]	[3]	Indefinite.
Lead Nitrate [4]	Chron Tox	150,000 to 300,000	gw	333,000	High	[3]	[3]	Indefinite.
Lead Chloride [4]	Chron. Tox	150,00 to 300,000	gw	10,600	High	[3]	[3]	Indefinite.
K128 Comb. Proc. WW:								
Lead	Chron. Tox	150 to 400	gw	1	Mod	[3]	[3]	Indefinite.
K129 Proc. WW Sludge:								
Lead	Chron. Tox	250,000 to 500,000	gw	1	Mod	[3]	[3]	Indefinite.
Lead Acetate [4]	Chron. Tox	250,000 to 500,000	gw	385,000	High	[3]	[3]	Indefinite.
Lead Nitrate [4]	Chron Tox	250,000 to 500,000	gw	333,000	High	[3]	[3]	Indefinite.
Lead Chloride [4]	Chron. Tox	250,000 to 500,000	gw	10,600	High	[3]	[3]	Indefinite.
TEL	Chron. Tox	10,000 to 20,000	gw	0.3	Low	4.97	1,660	High.
K130 Combined Plant WW Sludge:								
Lead	Chron. Tox	300 to 700	gw	1	Mod	[3]	[3]	Indefinite.
Lead Acetate [4]	Chron. Tox	300 to 700	gw	385,000	High	[3]	[3]	Indefinite.
Lead Nitrate [4]	Chron Tox	300 to 700	gw	333,000	High	[3]	[3]	Indefinite.
Lead Chloride [4]	Chron. Tox	300 to 700	gw	10,600	High	[3]	[3]	Indefinite.
K135 Mixed Alkyl Lead Wash-Water:								
Lead	Chron. Tox	50,000 to 150,000	gw	1	Mod	[3]	[3]	Indefinite.
EDB	Carc	2,000 to 5,000	gw	4,000	Mod	1.85	70.8	High
EDC	Carc	2,000 to 5,000	gw	8,690	Mod	1.39	24.5	High.
TEL	Chron. Tox	1,000 to 2,000	gw	0.3	Low	4.97	1,660	High.

[1] See Appendix A to the listing background document for a discussion of descriptors for solubility, rate of evaporation from water, volatility, mobility in soil, and persistence in ground water, surface water, and air.
[2] Verschueren, 1983.
[3] K_{ow} and K_{oc} are not applicable to metals.
[4] These substances are expected to form when lead bearing wastes come into contact with the appropriate acidic moiety.

The Agency is concerned about possible exposure to both lead and lead salts that may form in disposal situations. While the effects listed above are attributed only to lead, it is important to note that, from a toxicological point of view, there is little differentiation among lead and its salts. In fact, most major reference works group lead, its salts and its oxides under the inclusive term "inorganic lead." A standard reference in the field, (Casarett and Doull, 1980) states that, biologically, there are two forms of lead. These are the organic (alkyl) leads, and inorganic lead, which includes the salts and oxides of lead that are considered to act identically once absorbed into the systemic circulation. Similarily, the "Handbook of Toxic and Hazardous Chemicals" in its section of lead, defines lead as including lead oxides, metallic lead, and lead salts (Sittig, 1981). Furthermore, Clayton and Clayton (1981) state that lead, in all its forms, is a cumulative poison. Finally, a fourth standard reference work, Sax's *Dangerous Properties of Industrial Materials* (1976), attributes any differences in the relative toxicities of inorganic lead compounds to three factors, the first and most important of which is the solubility of the compound in body fluids. All of the lead salts given in Table I are highly soluble in water, and, thus, will be soluble in body fluids. Accordingly, exposure to the salts of lead, such as those listed in Table I, will cause deleterious effects similar to those listed above for lead.

Ethylene dibromide, present in one waste (K135) at up to 5,000 ppm, has been shown to be carcinogenic in both rats and mice, and is considered by the Agency's Carcinogen Assessment Group (CAG) to have shown "substantial" evidence of carcinogenicity (USEPA, 1980). Administered dermally, by inhalation, or by gavage, ethylene dibromide induced both local and remote tumors, including cancers of the skin, nasal cavity, stomach, lung, spleen, liver, adrenals and reproductive organs (NTP, 1982; NCI, 1978). Ethylene dichloride is also present in K135 at up to 5,000 ppm and is listed by CAG as having "sufficient" evidence of carcinogenicity (USEPA, 1980). Tetraethyl lead, a constituent of K129 and K135, is much more acutely toxic than lead or the inorganic leads, with an oral LD_{50} in rats of 12.3 mg/kg (Windholtz, 1984).

These compounds, therefore, exhibit toxicological properties of regulatory concern. (For additional information on the toxicity of the hazardous constituents, see the Health and Environmental Effects Profiles (HEEPs), available from the public docket at EPA Headquarters—see "ADDRESSES" section—and from the EPA Regional Libraries.)

The Agency has determined that these constituents are present in the wastes at significant concentrations that are capable of posing a substantial present or potential threat to human health and the environment. For example, both an Ambient Water Quality Criterion (AWQC), and a Drinking Water Standard (DWS) have been established (see 45 FR 79318, November 28, 1980, and 40 FR 59566, December, 1975, respectively) for one of the constituents fo concern that occurs in all of the wastes that we are proposing to list, namely lead. The AWQC/DWS developed for this substance to protect against health risks to humans resulting from the consumption of contaminated water is 50 ug/L. As can be seen above, this constituent is present in the wastes at concentrations of six thousand times to ten million times as high as the AWQC/DWS.

Of the two known carcinogens in the wastes, namely ethylene dibromide (EDB) and ethylene dichloride (EDC), only the latter has been assigned an AWQC. For ethylene dichloride, the AWQC to protect against an incremental increase of cancer risk over lifetime at the 10^{-6} level is 0.94 μg/1. As can be seen in Table I, EDC is present in K135 at a level that is 5 million times that of the AWQC. Additionally, ethylene dichloride's solubility in water is on the order of nine million times the AWQC, indicating its potential for migration and ground water contamination.

Examination of existing AWQC's for both pesticide and nonpesticide organic chemicals (see 45 FR 79318, cited above) reveals that, in the case of carcinogens, the AWQC value to protect against a 10^{-6} excess cancer risk from the consumption of water and aquatic organisms is nowhere greater than 5 micrograms per liter, and that, for many such compounds, the AWQC's are less than 5 nanograms per liter. Ethylene dibromide, the other carcinogen found in K135, is present at 5000 ppm, or one million times the higherst AWQC established for oncogenic compounds. Also, the Agency has estimated that lifetime exposure to 100 ppb of EDB in drinking water engenders an excess cancer risk as high as one in five

(USEPA, 1983c). Finally, EDB's solubility in water is approximately 800,000 times higher than the AWQC, indicating a significant potential for subsurface migration.

Although tetraethyl lead is only slightly soluble in water, the acute toxicity of this compound is so great that even a few parts per million in solution presents the potential for a human health hazard. This concern over very small concentrations is apparent in the recommendation of the Agency Work Group on Acceptable Daily Intakes (ADI), which recommended an oral ADI of 4.6×10^{-6} mg/L for tetraethyl lead (USEPA, 1985).

3. Mobility of Constituents of Concern

These constituents have solubilities that range from slightly soluble to highly soluble as indicated in Table I. The exposure pathway of principal concern is leading to ground water. The water solubility of a given hazardous constituent is indicative of its mobility potential (*i.e.*, the likelihood that it will be released from a management site and be dissolved in a water resource of concern). Leaching is of concern because these compounds are soluble in water and, therefore, could leach out of the wastes, potentially contamianting ground water.

The water solubility of elemental lead is moderate (see Appendix A to the listing background document, available in the public docket). The Agency, however, believes that various salts of lead listed in Table I may be formed if the wastes come into contact with the appropriate acid moieties either through inadvertent co-disposal, or interaction with other environmental components. These specific salts (lead acetate, lead nitrate, and lead chloride) were selected because their corresponding acids (acetic acid, nitric acid, and hydrochloric acid), are produced in large quantities, and have widespread commercial and industrial uses (Chemical Marketing Reporter, 1982), both of which engender the possibility of inadvertent co-disposal with several of the proposed lead-bearing wastes. As can be seen in Table I, the salts that may be formed are thousands of times more soluble than lead. This dramatic increase in solubility indicates that the salts have a high potential for soil mobility and, thus, may move through a landfill to contaminate an underlying aquifer. Thus, even though the elemental lead in these wastes is not highly mobile, the Agency believes that this constituent will become available for release into the environment as a result of the typical disposal practices for these wastes, and, therefore, pose a threat to human health and the environment. (Section V.B.1. of the background document provides a detailed discussion of the enhanced mobility of lead through the formation of lead salts.)

In laboratory tests, ethylene dichloride has been shown to percolate through a soil column of 140 cm depth (USEPA, 1984a). The fact that 10% of the sampled ground water in New Jersey contained EDC indicates that the compound may migrate down through some soil types under ambient conditions as well (Cohen, 1984). This transport is not unexpected, as the log octanol/water partition coefficient is 1.48, (Leo *et al.*, 1971), indicating that the substance is not immobilized through sorption to soils or sediments.

Similarly, ethylene dibromide has a moderate log octanol/water partition coefficient of 2.35 (Leo *et al.*, 1971), which indicates a tendency that is somewhat less than that of EDC to migrate down through soils. This is borne out by the fact that samples of aquifers and of well water in areas where ethylene dibromide was used as a soil fumigant contained ethylene dibromide at concentrations of from 0.05 to 10.0 ppb (average range), with peak levels at 500 ppb (USEPA, 1984b).

Tetraethyl lead is a liquid that boils at between 200 and 227°C (Windholtz, 1984), and solidifies at approximately −136.8°C (Clayton and Clayton, 1981). Tetraethyl lead thus remains a potentially mobile liquid over the entire range of temperatures likely to be encountered in the environment. While only slightly soluble in water (0.3 mg/L), Jarvie *et al.* (1981) point out that tetraethyl lead can form suspensions in water at approximately 39 to 40 mg/L. This indicates that tetraethyl lead can combine with water, and move with it through the soil to contaminate an underlying aquifer. Due to TEL's extreme toxicity, only a small percentage need leach from the waste to reach an environmental receptor at levels of regulatory concern.

4. Persistence of Constituents of Concern

The Agency considers a material to be persistent if it is present in the environment long enough to be detected, since it may also result in exposure to humans in that same period of time. Lead, whether it is in pure, metallic form, or in the form of a salt, or an oxide, is an element and, as such, will persist indefinitely.

The fate of ethylene dibromide released to water is relatively uncertain. While it is known that EDB hydrolyzes in water to ethylene glycol and bromoethanol, the reported rate of hydrolysis varies widely. Brown *et al.* (1975) report a half-life of 2.7×105 days, while Johns *et al.* (1976) have estimated a half-life of 5 to 10 days. In a recently completed study that simulated conditions similar to those in ground water, the EPA estimated that the half-life of EDB is aroung eight years (Cohen, 1984). As a halogenated alkane, ethylene dibromide does not biodegrade to any appreciable extent. The same is true for ethylene dichloride, which, given its structural similarity to ethylene dibromide and the fact that bromine atoms are more labile to hydrolysis, can be expected to have a similar half-life (approximately eight years). Some experimental data, however, suggest the possibility of a maximum half-life of 50,000 years at pH 7 and 25°C (Radding *et al.*, 1977). Suspensions of tetraethyl lead in distilled water that were kept in the dark (analogous to ground water conditions) were found to have only a two percent decomposition to triethyl lead cations over a 77 day period, indicating a resistance to hydrolysis. Under the assumption of first order kinetics, this finding indicates a half-life of 7.2 years. If second-order kinetics are applied, a half-life of 10 years is estimated. It should be noted that Fe^{3+} and Cu^{2+} ions, which occur in natural waters, catalyze the decomposition of TEL to triethyl lead, and that the decomposition is much more rapid than that of the same reaction in pure distilled water. Additionally, triethyl lead is highly toxic acid and, as a cationic salt, is virtually immune to hydrolysis (Jarvie *et al.*, 1981). Thus, tetraethyl lead that is released to ground water should persist for years, slowly decomposing to substances (triethyl lead, inorganic lead) which also are very toxic.

In substantiation of the persistence of the constituents of concern in water and soil it is noted that:

- Lead is an element and as such will persist in soil and water indefinitely.
- At the Naval Air Station, Lakehurst New Jersey, approximately 20,000 gallons of leaded fuel were dumped prior to 1966. In the late 1970's, tetraethyl lead still contaminated soil at a concentration of up to 200 ppm (JRB, 1984).
- Ethylene dichloride has been frequently detected in surface water, and less often in ground water (USEPA, 1984a). As previously noted, ten percent of the ground water sampled in New Jersey was found to contain ethylene dichloride.
- Ethylene dibromide was detected as a contaminant in over 1000 wells in

California, Georgia, Florida, Hawaii, South Carolina, Connecticut, Massachusetts, and Washington (Cohen, 1984b).

Due to the significant amounts of the hazardous constituents in these wastes, the toxic effects of these constituents, their potential for mobility by leaching from soil and their persistence in ground water, the Agency believes that these wastes pose a substantial present or potential hazard to human health and the environment, when improperly stored, transported, disposed of, or otherwise managed. The Agency, therefore, is proposing to add these wastes to the hazardous waste list in 40 CFR 261.32.

III. Test Methods for Compounds Added to Appendix VII

In 49 FR 38786–38809, Monday, October 1, 1984, the Agency proposed test methods (both those newly designed, as well as those previously available in SW–846—see below) for use in detecting specified substances by applicants who wish to conduct waste evaluations in support of delisting petitions, and by owners or operators of hazardous waste management facilities who must conduct ground water monitoring (see 40 CFR 264.99) or incinerator monitoring (see 40 CFR 264.341). These test methods will, upon promulgation, be included in 40 CFR Part 261, Appendix III. (The comment period for the proposed test methods closed on December 31, 1984).

In the October 1, 1984, proposal, Method Numbers 8010 and 8240 were designated for testing ethylene dibromide (dibromoethane), and Method Numbers 7420 and 7421 were designated for tetraethyl lead. Although we are mentioning the test methods proposed for use in analyzing for ethylene dibromide and tetraethyl lead in the wastes proposed for listing today, we are not reopening the comment period at this time. Lead and ethylene dichloride are already included in 40 CFR Part 261, Appendix III. The methods to use for detecting the presence and concentration of lead are 7420 and 7421, and the methods to use for determining the presence and concentration of ethylene dichloride (dichloroethane) are 8010 and 8240.

These methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW–846, 2nd ed., July 1982, as amended; available from: Superintendent of Documents, Government Printing Office, Washington, DC 20420, (202) 783–3238, Document Number: 055–002–81001–2.

IV. CERCLA Impacts

All hazardous wastes proposed for today's proposed rule will, upon the effective date of promulgation, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center (at (800) 424–8802 or at (202) 426–2675) of the release. (See CERCLA section 103 and 50 FR 13456–13522, April 4, 1985.)

Pursuant to section 102, all hazardous wastes newly designated under RCRA will have a statuatorily imposed RQ of one pound unless and until adjusted by regulation. If, however, a newly listed hazardous waste contains hazardous substances for which final RQs have already been assigned in Table 302.4, 40 CFR Part 302, the lowest RQ assigned to any of the constituents present in the waste represents the RQ for the waste stream. See 50 FR 13463 (April 4, 1985). Thus, if the waste contains only one constituent of concern, the waste will have the same RQ as that of the constituent.

In the case of wastes K127, K129, and K130, lead is the only hazardous constituent. Because lead presently has an RQ of one pound (see 50 FR 13489), the Agency ordinarily would propose that the RQ for wastes K127, K129, and K130 also would be one pound. However, the Agency has proposed in a Notice of Proposed Rulemaking (NPRM), that the RQ for lead be adjusted to 5000 pounds (see 50 FR 13519). Therefore, the Agency Proposes in this NPRM that the RQ for wastes K127, K129, and K130 be 5000 pounds.

In the case of waste K128, both lead and tetraethyl lead have been identified as hazardous constituents. Because the Agency has proposed in the above-referenced NPRM that the RQ for tetraethyl lead be 10 pounds (see 50 FR 13502), the Agency proposes in this NPRM that the RQ for waste K128 be 10 pounds.

In the case of waste K135, four hazardous constituents—lead, tetraethyl lead, ethylene dibromide and ethylene dichloride—have been identified as constituents of concern. Because ethylene dibromide and ethylene dichloride have higher RQs (1000 pound and 5000 pounds, respectively, see 50 FR 13487), than the proposed 10 pound RQ for tetraethyl lead, the Agency proposes in this NPRM that the RQ for waste K135 be 10 pounds. However, because ethylene dibromide and ethylene dichloride are currently undergoing carcinogenicity assessment for CERCLA RQ adjustment (ranking) purposes, the RQ for waste K135 is subject to change when the assessment is complete, as will be noted in its listing in Table 302.4.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

It contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's announcement proposes regulations that would not be effective in authorized States since the regulations would not be imposed pursuant to be Hazardous and Solid Waste Amendments of 1984. Thus, the regulations will be applicable only in those States that do not have interim or

final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 261.21(e)(2) requires that States that have final authorization modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs already may have regulations similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations as RCRA hazardous wastes until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law.

States that submit official applications for final authorization less than 12 months after promulgation of these regulations may be approved without including equivalent standards. However, once authorized, a State must modify its program to include equivalent regulations within the time period discussed above. The process and schedule fo revision of State programs is described in 40 CFR 271.21.

VI. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The additional incurred annual cost for disposal of these wastes as hazardous is less than $6,000, well under the $100 million constituting a major regulation. This cost is insignificant and results from minimal additional compliance requirements, such as reporting, waste analyses, and permit modification for these wastes. (The detailed economic analysis is presented in a separate report; however, since much of the data used to calculate the economic impact is confidential, the economic analysis report is also confidential.)

In addition, we do not expect that there will be any adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is being conducted.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes proposed for listings here are not generated by small entities (as defined by the Regulatory Flexibility Act). Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: February 24, 1986.

Lee M. Thomas,

Administrator.

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For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

§ 261.32 [Amended]

2. In § 261.32, add the following waste streams to the subgroup 'Organic Chemicals':

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
•	•	•
K127	Recovery furnace slag and flue dust from the sodium-lead alloy alkyl lead process.	(T)
K128	Combined process wastewaters from the sodium-lead alloy alkyl lead process.	(T)
K129	Wastewater treatment sludges from the sodium-lead alloy alkyl lead process.	(T)
K130	Wastewater treatment sludges resulting from the combined treatment of facility wastewaters, which include, but are not limited to, wastewaters from the sodium-lead alloy alkyl lead process.	(T)
K135	Washwater from the formulation of mixed alkyl leads.	(T)
•	•	•

Appendix VII—[Amended]

3. Add the following entries in numerical order to Appendix VII of Part 261:

EPA hazardous waste No.	Hazardous constituents for which listed
•	•
K127	Lead.
K128	Lead.
K129	Lead, tetraethyl lead.
K130	Lead.
K135	Lead, ethylene dibromide, ethylene dichloride, tetraethyl lead.
•	•

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BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 78-72; CC Docket No. 80-286]

MTS and WATS Market Structure Establishment of a Joint Board; Rochester Plan

AGENCY: Federal Communications Commission.

ACTION: Order Inviting Comments.

SUMMARY: This order invites comments on the merits of an experimental access service tariff proposal filed by the Rochester Telephone Corporation (Rochester). The Commission is taking this action in order to enable the Joint Board to evaluate and analyze the Rochester plan and to prepare a recommendation for Commission consideration. This will facilitate the Commission's decision making process.

DATES: Comments on the Rochester plan are to be filed no later than March 21, 1986, and reply comments no later than April 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Lynch, Common Carrier Bureau (202) 632-6363.

Order Inviting Comments

In the matter of MTS and WATS Market Structure amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board; CC Docket Nos. 78-72 and 80-286.

Adopted: February 19, 1986.
Released: February 21, 1986.

By Chief, Common Carrier Bureau.

I. Introduction

1. On January 16, 1986, the Rochester Telephone Corporation (Rochester) filed a petition for waiver of §§ 69.105, 69.202, 69.205, and 69.206 of the Commission's Rules to permit Rochester to file an experimental access service tariff for its greater Rochester, New York service territory.[1] Rochester states that its proposed experimental tariff structure would emulate the original access charge plan adopted by the Commission in the *MTS and WATS Market Structure* proceeding.[2] In its *Recommended Decision and Order*[3] adopted on November 15, 1984, the Federal-State Joint Board urged the Commission to explore experimental tariff mechanisms for recovering the interstate allocation of non-traffic sensitive (NTS) costs by providing for review of such proposals through the Joint Board process. The Commission subsequently adopted the Joint Board recommendation.[4] Accordingly, we are requesting comments concerning Rochester's proposal and asking the Joint Board to prepare recommendations concerning this matter.

II. The Rochester Plan

3. Rochester states that its plan is designed to test the effects of the Commission's original access charge plan in a specific market. Effective June 1, 1986, Rochester would implement an interstate subscriber line charge applicable to residential and single line business customers in its service territory equal to its fully allocated interstate NTS loop costs which currently are $3.54 per line. Rochester would also file a separate per minute carrier common line charge for interstate calls originating and terminating in its service territory to be effective June 1, 1986. This charge would reflect the reduced NTS carrier common line revenue requirement resulting from Rochester's increased subscriber line charge and would maintain the 55 percent discount for non-premium access. Rochester would continue to pool its common line revenues, remitting to the pool revenues computed based on

[1] Rochester also seeks waivers for Seneca-Gorham Telephone Company and Ogden Telephone Company. Rochester states that these companies concur in its interstate switched access service tariff and have advised Rochester that they would like to participate in its experiment.

[2] CC Docket No. 78-72, *Third Report and Order*, 93 FCC 2d 241 (1983), *modified on reconsideration*, 97 FCC 2d 682 (1983), *modified on further reconsideration*, 97 FCC 2d 834 (1984), *aff'd in principal part and remanded in part, Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 105 S. Ct. 1224 (1985), *modified on further reconsideration*, 49 FR 46383 (November 26, 1984), 50 FR 18249 (April 30, 1985), *aff'd on further reconsideration*, 50 FR 43707 (October 29, 1985 *appeal docketed, U.S. Telephone Inc. v. FCC*, No. 84-1115 (D.C. Cir. March 23, 1984).

[3] *MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72 and 80-286, 49 FR 48325 (December 12, 1984).

[4] *Decision and Order*, CC Docket Nos. 78-72 and 80-286, 50 FR 939 (January 8, 1985).

the NECA rate multiplied by Rochester's actual minutes of use as well as the subscriber line charge revenues generated by the present Part 69 Rules. However, it would not remit to the National Exchange Carrier Association (NECA) pool its additional residential and single line business subscriber line charge revenues. Rochester also proposes that the American Telephone and Telegraph Company (AT&T) be required (or voluntarily agree) to reduce its interstate toll rates for calls originating in the Rochester, New York service territory by an amount equivalent to the reduction in AT&T's access service charges for both its originating and terminating traffic in Rochester's service area.[5] Rochester states that the other common carriers could be expected to pass through to the consumers all or most of their cost savings in the form of reduced switched access service rates for calls from Rochester in order to maintain their competitive posture vis-a-vis AT&T.[6]

4. Rochester proposes to apply its experimental tariff for a period of two years and provide information to the Joint Board and the Commission periodically concerning the following matters: (1) Elasticity of demand for toll service at the rate levels envisioned by the Commission's original access charge plan; (2) changes in customer choices of local service options in response to the increased interstate subscriber line charge; (3) requests for lifeline exemptions in response to the increased subscriber line charge; and (4) effects on bypass activities. According to Rochester, the data gathered under its experiment will allow a more informed policy decision when the Joint Board and Commission undertake review of the current access charge plan beginning in late 1986.

III. Discussion

5. The Commission is committed to working closely with the Joint Board in exploring experimental tariff mechanisms for recovering the interstate allocation of NTS costs. We are therefore initiating this proceeding to enable us to evalute the Rochester plan through the Joint Board mechanism. We believe that expeditious consideration of this plan is important. Interested parties are hereby invited to comment on the merits of allowing Rochester to implement this plan.[7] We are asking the Federal-State Joint Board established in CC Docket No. 80–286 to analyze the Rochester petition and prepare a recommendation for Commission consideration.

IV. Ordering Clauses

6. Accordingly, it is ordered, that comments on the Rochester petition are to be filed with the Secretary, Federal Communications Commission, no later than March 21, 1986. Reply comments are to be filed no later than April 4, 1986. All comments and reply comments are to be served on the Joint Board members and staff listed in Attachment A.

7. It is further ordered, that the Federal-State Joint Board is to analyze the Rochester plan and prepare a recommendation for Commission review.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

Attachment A

Joint Board Members

Chairman Mark S. Fowler, Federal Communications Commission, 1919 M Street, NW., Room 814, Washington DC 20554

Commissioner Henry M. Rivera, Federal Communications Commission, 1919 M Street, NW., Room 832, Washington DC 20554

Commissioner Mimi Weyforth Dawson, Federal Communications Commission, 1919 M Street, NW., Room 826, Washington DC 20554

Chairman Marvin R. Weatherly, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501 (Use Express Mail or Courier Service)

Chairman Edward F. Burke, Rhode Island Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903

Commissioner Edward P. Larkin, New York Public Service Commission, 400 Broome Street, New York, New York 10013

Commissioner Edward B. Hipp, North Carolina Utilities Commission, Box 29510, Raleigh, North Carolina 27626–0510

Federal-State Joint Board Staff

Ronald Choura, Chairman, Federal-State Joint Board Staff, Michigan Public Service Commission, 6545 Mercantile Way, Lansing, Michigan 48910

Lorraine Plaga, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501 [Use Express Mail or Courier Service)

Elton Calder, Georgia Public Service Commission, 244 Washington Street, SW., Atlanta, Georgia 30334

Guy E. Twombly, Maine Public Utilities Commission, 242 State Street, Augusta, Maine 04333

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[5] Rochester states that the reduced toll rates would approximate those which Rochester customers would pay if the nationwide carrier common line charge were reduced as proposed by Rochester.

[6] Rochester does not propose reduced access charge rates for interexchange carriers that subscribe only to terminating access service and do not provide originating interexchange service in Rochester because their cost savings would not be passed through to toll users participating in the Rochester experiment.

[7] Among other things, interested parties should address the extent to which the Rochester plan satisfies the four basic goals enunciated by the Commission in the *MTS and WATS Market Structure* proceeding. *See Decision and Order*, CC Docket Nos. 78–72 and 80–286, 50 FR 47746 (November 20, 1985) at paragraph 7.

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47 CFR Part 73

[MM Docket No. 86–73]

TV Broadcast Station in Grand Island, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to change the offset designation from "minus" to "zero" for Channel 17 at Grand Island, Nebraska, on the Commission's own motion. The change in offset could avoid objectionable interference between Station KTTW, Channel 17– at Sioux Falls, South Dakota, and a proposed operation on the co-channel at Grand Island, Nebraska.

DATES: Comments must be filed on or before April 21, 1986 and reply comments on or before May 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations

(Grand Island, Nebraska); MM Docket No. 86–73.

Adopted: January 31, 1986.

Released: February 26, 1986.

By the Chief, Policy and Rules Division.

1. The Commission, on its own motion, proposes to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, the change the offset on Channel 17 at Grand Island, Nebraska, from its current "minus" designation to a "zero" designation.

2. Family Broadcasting Co., Inc. filed an application (BPCT–840601KF) for a new television station on Channel 17– at Grand Island. During the processing of the application, the staff discovered that this assignment has the same offset as the closest co-channel assignment (Channel 17–, Sioux Falls, South Dakota) for which a construction permit has been granted to Family Broadcasting Co., Inc. to operate Station KTTW. Section 73.610 of the Commission's rules specify a 175 mile separation between co-channel UHF assignments in Zone II of the United States. This distance, however, is predicated upon the use of proper offset designations.[1] Here, while the distance between the two operations is 197 miles, it is not great enough to avoid objectionable interference absent the imposition of the proper offset. Therefore, we wish to correct the designation for Channel 17 at Grand Island to specify a "zero" offset.

PART 73—[AMENDED]

3. We believe the public interest would be served by proposing to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, since it could permit improved service to the public by both the Grand Island, Nebraska, and Sioux Falls, South Dakota, stations. Accordingly, we propose to amend the Table of Assignments, for the community listed below, to read as follows:

City	Channel	
	Present	Proposed
Grand Island, NE	11–, 17–	11–, 17

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

[1] A non-offset station 260 miles away will cause the same amount of interference as an otherwise identical, but offset, station 175 miles away. There are currently no Channel 17 assignments, with a zero offset, within 260 miles of the Grand Island proposed site.

Note.—A Showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 21, 1986, and reply comments on or before May 6, 1986, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may led the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–4612 Filed 3–3–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–70; RM–5131]

FM Broadcast Station in Las Vegas and North Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of FM Channel 278 for Channel 277 at Las Vegas, Nevada, and Channel 282 for Chanel 281 at North Las Vegas, at the request of Holiday Broadcasting Co., Inc. The substitution of channels would permit Station KCRR (FM) to continue operating from its new transmitter site in compliance with the minimum distance separation requirements.

DATES: Comments must be filed on or before April 21, 1986, and reply comments on or before May 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: LESLIE K. SHAPIRO, MASS MEDIA BUREAU, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specified sections are cited to text.

Proposed Rulemaking

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Las Vegas and North Las Vegas, Nevada): MM Docket No. 86-70, RM-5131.

Adopted: January 31, 1986.

Released: February 26, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it the petition for rule making filed by Holiday Broadcasting Company, licensee of FM Station KCRR, Channel 274, at Bullhead City, Arizona ("petitioner"), requesting the substitution of FM Channel 278 for Channel 277 at Las Vegas, Nevada, and Channel 282 for Channel 281 at North Las Vegas, Nevada.

2. Petitioner states that it has recently been forced to relocate its studio and transmitter from its licensed site in the business section of Bulhead City. Because of the urgency of the move, the Commission granted it Special Temporary Authority ("STA") to operate with 220 watts effective radiated power, rather than its authorized 100 kilowatts, from an existing communications site stop Spirit Mountain. Although the petitioner believes its new site to be an optimum one, Station KCRR, operating with its licensed facilities, would be short-spaced to Channel 277 at Las Vagas. Its proposed substitution (Channel 278) would be short-spaced to Channel 281 at North Las Vegas. Petitioner has determined that the channel substitutions can be accomplished without affecting any other existing or proposed allotments. Thus, rather than seek a waiver of the Commission's mileage separation requirements, it seeks the substitution of channels.

3. As noted by the petitioner, applications are on file for both the Las Vegas and North Las Vegas channels. No construction permit has been issued for either channel, however, a Review Board decision, which is now on appeal, has granted the application of Debra D. Carrigan for Channel 281 at North Las Vegas (MM Docket 83p-858 *et al.* F.C.C. 85R-26, adopted March 13, 1985). Our engineering study shows that Channels 278 and 282 can be allocated to Las Vegas and North Las Vegas, respectively, in compliance with the Commission's minimum distance separation requirements and can also be utilized at the applicant's sites. Further, the substitution of channels would permit the petitioner to permanently relocate its transmitter atop Spirit Mountain and transmit with its authorized power level.

PART 73—[AMENDED]

4. Based on the above, we believe the public interest would be served by proposing to substitute the channels, as requested. Should the channels ultimately be made, the applicants for both Channel 277 and Channel 281 would be permitted to amend their applications to specifiy the new channel without loss of cut-off status. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Las Vegas, NV	222, 226, 242, 246, 253, 270, 277, and 293.	222, 226, 242, 246, 253, 270, 278, 293, and 300 [1]
North Las Vegas, NV	281	282

[1] Channel 300 is proposed for allocation to Las Vegas, Nevada, by Notice of Proposed Rule Making, MM Docket 84-655, 49 FR 29425, published July 20, 1984.

5. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and the filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest it required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before April 21, 1986, and reply coments on or before May 6, 1986, and are advised to read Appendix for the proper procedures. Additionally, a copy of such coments should be served on the petitioners, or their counsel or consultant, as follows: Holiday Broadcasting Co., Inc., P.O. Box 1604, Bullhead City, Arizona 86430, (Petitioner).

7. It is ordered, that the Secretary shall send a copy of this *Notice of Proposed Rule Making*, By certified mail, return receipt requested, to the applicants for Channel 277, Las Vegas, Nevada, and Channel 281, North Las Vegas, Nevada, as follows:

Gary E. Wilson, 28 Windfall Road, Belvedere, California 94920
(BPH-8211021AI, Channel 277, Paradise, Nevada)

East Las Vegas Broadcasting, Inc., 1410 Glenare Drive, Casper, Wyoming 82601
(BPH 820526AK, Channel 277, East Las Vegas, Nevada)

Women's Coalition for Better Broadcasting, Box 52, Greenville, South Carolina 29602
(BPH 820811AJ, Channel 277, Las Vegas, Nevada)

Terrell Broadcasting Co., 6 Sugarwood Drive, Pittsford, New York 14534
(BPH 820902AO, Channel 277, Las Vegas, Nevada)

Martin Intermart Inc., 522 Park Street, Box 2696, Jacksonville, Florida 32203
(BPH 8210020AP, Channel 277, Las Vegas, Nevada)

Great Scott Music Enterprises, 2700 Royal Road, North Las Vegas, Nevada 89030
(BPH 821020AO, Channel 277, East Las Vegas, Nevada)

Summit Broadcasting, Inc., 1029 Pacific Street, San Luis Obispo, California 93401
(BPH 821021AS, Channel 277, Las Vegas, Nevada)

Fremont Broadcasting Corp., 1935 Boulder Highway, Henderson, Nevada 89015
(BPH 821021AP, Channel 277, Las Vegas, Nevada)

Debra D. Carrigan, 3550 Katmai Drive, Las Vegas, Nevada 89122
(BPH 810909AH, Channel 281, North Las Vegas, Nevada)

Constance J. Wodlinger, 800 Galleon Drive, Naples, Florida 33940
(BPH 820322AW, Channel 281, North Las Vegas, Nevada)

Silver State Communications, Inc., P.O. Box 4001, Las Vegas, Nevada 89127
(BPH 820414AF, Channel 281, North Las Vegas, Nevada)

MCB Broadcasting of Nevada, Inc., 318 West Boardman, Youngstown, Ohio 44503
(BPH 820415AD, Channel 281, North Las Vegas, Nevada)

New Radio, Inc., 624 South 9th Street, Las Vegas, Nevada 89101
(BPH 820415AZ, Channel 281, North Las Vegas, Nevada)

Las Vegas Electronics, Inc., 2001 East Flamingo Road, Las Vegas, Nevada 89109

(BPH 820415AM, Channel 281, North Las Vegas, Nevada)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been seved on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is alloted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provision of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filing made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–4615 Filed 3–3–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–72; RM–5073]

FM Broadcast Station in Columbia, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of FM Channel 248C1 for existing Channel 250 at Columbia, South Carolina, and the modification of the license of Station WCOS–FM to specify operation on the new channel, at the request of WCOS, Inc. The substitution of channels would eliminate short-spacings to several North Carolina and South Carolina stations. We also propose to amend the Table on our own motion by reallocating Channel 261A from Columbia to West Columbia, South Carolina, to reflect its actual usage by Station WSQC (FM) there.

DATES: Comments must be filed on or before April 21, 1986, and reply comments on or before May 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read.

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Columbia, South Carolina); MM Docket No. 86–72, RM–5073.

Adopted: January 31, 1986.

Released: February 26, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by WCOS, Inc. ("Petitioner"), licensee of Station WCOS–FM, South Carolina. Petitioner seeks the substitution of Channel 248C1 for its Channel 250, and the modification of its license to specify operation on the new frequency.

2. WCOS operates as an existing short-spaced allocation to co-channel Station WPEG, Concord, North Carolina.

and to adjacent channel Stations WQSM, Fayetteville, North Carolina, and WBFM, Seneca, South Carolina. The Commission has granted WCOS–FM a construction permit to move its transmitter site and increase its facilities to those of a full Class C (BPH–831123AJ) and it is now ready to seek program test authority. This move of transmitter and increase in facilities leaves in place the 83 mile short-spacing to Station WPEG, the 13 mile short-spacing to Station WQSM and the 33 mile short-spacing to Station WBFM, and thus the need to operate with a directional antenna. However, petitioner has found that if it shifts its operation to Channel 248 and operates as a Class C1, with a decrease in its antenna height, all short-spacings will be eliminated and it will be able to operate nondirectionally.

3. As to the modification of its license, petitioner states that § 1.420(g) of the Rules should not apply in that its request is not an upgrade but a downgrade of its facilities. Hence, no second equivalent channel need be available for use by other interested parties or if that is not possible, Channel 248C1 should not be opened for competing applications, according to WCOS.

4. Channel 248C1 can be allocated to Columbia and used at WCOS–FM's new transmitter site in compliance with the Commission's minimum distance separation and other technical requirements. In addition, it eliminates the existing short-spacings to Stations WPEG, WQSM, and WBFM. As such, we believe petitioner's proposal warrants further consideration. We believe, also, that § 1.420(g), governing modification of existing station licenses, does not apply in this case. Station WCOS–FM does not seek an upgrade in its facilities, in that it is already operating on a Class C channel and has been issued a construction permit specifying full class C facilities. By this petition for rule making, it seeks a voluntary downgrade to specify Class C1 facilities. Thus, the procedures outlined in § 1.420(g) of the Rules and *Modification of FM and TV Station Licenses*, 98 FCC 2d 916 (1984), do not apply in this case. See, *Key West and Hialeah, Florida*, 50 FR 26229, published June 25, 1985.

PART 73—[AMENDED]

5. As an additional matter, we propose to amend the FM Table of Allotments by reallocating Channel 261A from Columbia to West Columbia, South Carolina, to reflect its present usage there by Station WSCQ. Comments are invited on the proposals to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Columbia, SC	228A, 250, 261A, 276A, and 284.	228A, 248C1, 276A, and 284.
West Columbia, SC	.....	261A.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be alloted.

7. Interested parties may file comments on or before April 21, 1986, and reply comments on or bofore May 6, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Matthew H. McCormick, Esq., Reddy, Begley & Martin, 2033 M Street NW., Washington, DC 20036, (Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schoft,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)[1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420

of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-4613 Filed 3-3-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-71; RM-5074]

FM Broadcast Station in Post, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Boles Broadcasting Company, proposes the substitution of Channel 297C2 for 297A at Post, Texas, in order to provide that community with its first wide coverage FM service.

DATES: Comments must be filed on or before April 21, 1986, and reply comments on or before May 6, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Post, Texas); MM Docket No. 86-71, RM-5074.

Adopted: January 31, 1986.
Released: February 26, 1986.

1. The Commission has before it for consideration a petition for rule making filed by Boles Broadcasting Company ("petitioner"), licensee of AM Station KPOS in Post, Texas, seeking the substitution of Class C2 Channel 297 for 297A at Post, Texas. Petitioner notes that Channel 297A was alloted to Post in MM Docket No. 84-231 *First Report and Order*, 49 F.R. 3514, published January 25, 1985. This Channel is #29 in the sequential order of the random selection in which the new FM allotments will be made available for applications. The Class C2 channel could provide that community with its first wide coverage FM service. Petitioner submitted information in support of the proposal and expressed an intention to apply for the channel.

2. We believe the petitioner's proposal warrants consideration. The substitution can be made in compliance with the Commission's minimum distance separation requirements.

PART 73—[AMENDED]

3. In view of the fact that the proposed substitution could provide Post, Texas, with its first wide coverage FM service, the Commission proposed to amend the FM Table of Allotments, § 73.202(b) of the Rules, for the following community:

City	Channel	
	Present	Proposed
Post, TX	297A	297C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.— A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 21, 1986 and reply comments on or before May 6, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

James Boles, Boles Broadcasting Company, 115 West Main, P.O. Box 98, Post, Texas 79356

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Comunications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer

whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-4614 Filed 3-3-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation Concerning Management and Operating Contracts

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend the DOE Acquisition Regulation (DEAR) to implement the requirements of the Department of Defense (DOD) Authorization Act, 1986 (Pub. L. 99-145, November 8, 1985) (hereafter referred to as the "Act"), which at section 1534 of Title XV, Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986, requires the Secretary of Energy to establish regulations specifying that certain costs are not allowable in connection with contract awards in excess of $100,000 which obligate funds appropriated for national security programs of DOE.

The amendments being proposed today pertain to DOE's management and operating (M&O) contracts. To ensure uniform implementation of the Act, the proposed amendments are predicated, to the maximum extent practicable, on the same criteria as are being established by DOD under the requirements of section 911 of the Act which, for DOD contracts, contains the identical cost prohibitions specified under section 1534 for DOE contracts. The intent of the proposed amendments is to establish uniform contractual coverage and related cost principle guidance for application to all of the Department's M&O contractors consistent with the DOD criteria. Where necessary, however, the DOD criteria, proposed as amendments to the Federal Acquisition Regulation (FAR) for Federal-wide application, have been modified or expanded to clarify unique DOE policies and procedures, e.g., lobbying, public relations and advertising, travel and entertainment costs. The proposed amendments, when promulgated as a final rule, will prohibit M&O contractors from claiming as allowable reimbursable contract costs the types of costs which have been cited to be not allowable in section 1534 of the Act.

In the interest of Federal-wide uniformity DOE does not, at this time, intend to establish unique regulatory amendments for its non-M&O acquisition contracts, i.e., contracts subject to FAR, Part 31, Contract Cost Principles and Procedures. Such non-M&O contracts will be subject to the cost principle amendments being established separately in the FAR, or that may be established in applicable Office of Management and Budget (OMB) circulars or otherwise to implement the Act as discussed below.

DATE: Written comments should be submitted no later than April 3, 1986.

ADDRESS: Comments should be addressed to: U.S. Department of Energy, Rudolph J. Schuhbauer, Business and Financial Policy Branch (MA-421.2), 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Rudolph J. Schuhbauer, Business and Financial Policy Branch (MA-421.2), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 252-8173

Paul J. Sherry, Office of the Assistant General Counsel for Procurement and Financial Incentives (GC-43), Washington, DC 20585, (202) 252-1526

SUPPLEMENTARY INFORMATION:

I. Background

Under section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the Department of Energy Acquisition Regulation (DEAR) was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The purpose of this rulemaking is to revise the DEAR as necessary to implement the requirements of section 1534 of the Act which specifies, in part, that the following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly

associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fare.

Section 1534 of the Act provides that implementing DOE regulations may establish appropriate definitions, exclusions, limitations and qualifications, and defines the term "covered contract" as a DOE contract in excess of $100,000 which obligates funds appropriated for national security programs of the Department of Energy. For Federal-wide uniformity and practicality of implementation, the Department proposes to extend the requirements of section 1534 to all M&O contracts regardless of the type of program or funding source involved. The resulting final requirements will be incorporated in existing M&O contracts within 30 days after the effective date of the final rule and will be required to be incorporated in new M&O contracts as of the effective date of the final rule.

Cost prohibitions identical to those listed in section 1534 were also established in section 911 of the Act for contracts awarded by DOD. Implementing regulations applicable to both DOD and DOE contracts placed with commercial organizations, but not to DOE M&O contracts, were proposed separately under the FAR amendment process as amendments to FAR Subpart 31.2, Contracts with Commercial Organizations (See **Federal Register** (FR) Notices of Proposed Rulemaking at 50 FR 7199, February 21, 1985 (Public Relations and Advertising); 50 FR 8752, March 5, 1985 (Travel); 50 FR 51777, December 19, 1985 (Entertainment); 50 FR 51779, December 19, 1985 (Alcoholic Beverages); and at 50 FR 53088, December 27, 1985 (Contributions and Donations, Fines and Penalties, and Defense of Fraud Proceedings)). To date, there has been no substantive change proposed under the FAR with regard to the existing lobbying cost principle provisions found at FAR 31.205–22, Lobbying costs.

Consistent with the intent of the Act, the amendments being proposed today essentially contain the language included in the counterpart amendments proposed to FAR Subpart 31.2, Contracts with Commercial Organizations, and the existing lobbying cost principle provisions found at FAR 31.205–22. Where not adopted verbatim, the FAR language was modified to reflect the unique circumstances applicable to DOE's M&O contractors.

A brief description of the proposed changes to DEAR Subpart 970.31, Contract Cost Principles and Procedures, follows: Subsection 970.3101–6, Advance Understandings on Particular Cost Items, is expanded to include lobbying, public relations and advertising, and travel and relocation as items of cost where advance agreements would be particularly important. Existing subsection 970.3102–7, Lobbying Costs, is replaced in its entirety for consistency, to the maximum extent practicable, with the requirements of section 1534 of the Act, the lobbying cost principle promulgated by the OMB for non-profit organizations ("Lobbying" revision to OMB Circular A–122), and the FAR Subpart 31.2 lobbying cost principle. As revised, subsection 970.3102–17, Travel Costs, further provides that the cost of air travel by other than commercial carrier (e.g., by corporate aircraft) in excess of the cost of travel by commercial carrier is unallowable. Subsections 970.3102–19, Public Relations and Advertising, and 970.3102–20, Defense of Fraud, are proposed as new cost principle guidance for determining the allowability of such costs.

DEAR Subpart 970.52, Contract Clauses for Management and Operating Contracts, is proposed to be amended at subsections 970.5204–13 and 970.5204–14, both titled "Allowable costs and fixed fee," for purposes of making the ten cost items specified as not allowable in section 1534 of the Act unallowable for reimbursement under the standard terms and conditions to be incorporated in M&O contracts.

DOE believes that section 1534 of the Act should also be applied to all other entities doing business with the Department under non-M&O acquisition contracts, i.e., educational institutions, non-profit organizations and State and local governments. However, allowable/unallowable costs for these organizations are governed by cost principles issued by OMB, i.e., OMB Circulars A–21, A–122 and A–87, respectively. DOE also believes that the cost prohibitions of section 1534, if applied to DOE contracts only, will result in an inequitable and administratively burdensome situation being created for any such entity dealing with multiple Federal agencies. Therefore, DOE is not proposing today to amend, for DOE only, the cost principles applicable to such organizations in order to fully implement section 1534. DOE is pursuing with OMB and DOD the need for changes to the applicable OMB circulars for the unallowable costs of section 1534 not otherwise currently unallowable under the circulars. In the event that OMB determines that changes to the circulars are unnecessary, DOE may, prior to April 7, 1986, announce its intention to extend the cost prohibitions of section 1534 to these organizations under applicable DOE contracts. Comments are invited on this issue.

II. Procedural Requirements

A. Review Under Executive Order 1229

This Executive order, entitled "Federal Regulations," requires that certain regulations be reviewed by OMB prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This proposed rule does not involve any of the topics requiring prior review under the Bulletin and is accordingly exempt from such review.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed by this proposed rule have been cleared by OMB for DOE use

under OMB clearance number 1910–0500.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on February 25, 1986.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201); and sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

2. Subsection 970.3101–6 is amended by revising paragraphs (a)(3) and (a)(8), and adding new paragraphs (a)(10), (a)(11) and (a)(12) to read as follows:

970.3106-6 Advance understandings on particular cost items.

(a) * * *

(3) Professional or technical consulting services;

* * * * *

(8) Unemployment insurance experience ratings;

* * * * *

(10) Lobbying costs;

(11) Public relations and advertising; and

(12) Travel and relocation costs as related to special or mass personnel movements and, as related to travel via contractor-owned-leased, or -chartered aircraft.

* * * * *

3. Subsection 970.3102–7 is revised to read as follows:

970.3102-7 Lobbying costs.

(a) Costs associated with the following activities are unallowable:

(1) Attempts to influence the outcome of any Federal, state, or local election, referendum, initiative, or similar procedure, through inkind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence—

(i) The introduction of Federal or state legislation; or

(ii) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence—

(i) The introduction of Federal or state legislation; or

(ii) the enactment or modification of any pending Federal or state legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to enage in unallowable activities.

(b) The following activities are excepted from the coverage of paragraph (a) above:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or lefters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) make by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this subsection for transportation, lodging or meals are unallowable unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing or providing Congressional members with technical and scientific advice of contractor-employed experts pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the appropriate Committee or Subcommittee.

(2) Any lobbying made unallowable under paragraph (a)(3) above to influence state legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) Annually when submitting a cumulative claim for net costs incurred under the contract (i.e., Voucher Accounting For Net Expenditures Accrued pursuant to 970.5204–16(e), or annual cost statement for nonintegrated contractors) M&O contractors shall be required to separately identify total unallowable lobbying costs incurred, if any, for the applicable period and such costs shall thereafter be treated as unallowable activity costs.

(d) M&O contractors shall be required to submit, as part of their annual claim or cost statement, a certification that the requirements and standards of this subsection have been complied with.

(e) M&O contractors shall be required to maintain adequate records to demonstrate that the certification of costs as being allowable or unallowable pursuant to this subsection complies with the requirements of this subsection.

(f) Time logs, calendars, or similar records shall not be required to be

created for purposes of complying with this subsection when:

(1) The employee engages in lobbying (as defined in paragraphs (a) and (b) above) less than 25 percent of the employee's compensated hours of employment during that calendar month; and

(2) The organization has not materially misstated any allowable or unallowable costs within the preceding five-year period.

When conditions in paragraphs (f) (1) and (2) immediately above are met, contractors are not required to establish records in addition to those already required and maintained to support the allowability of claimed costs for lobbying activities, and the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during any calendar month.

(g) Existing procedures should be utilized to resolve, in advance, any significant questions or disagreements between the contractor and DOE concerning the interpretation or application of this subsection.

4. Subsection 970.3102–17 is amended by revising paragraph (a) to read as follows:

970.3102–17 Travel costs.

(a)(1) *Commercial air travel.* It is the policy of the DOE to require the use of the lessor of the lowest available commercial discount air fare accommodations or other less than first-class commercial air accommodations for all necessary travel under the contract, except when such accommodations are not reasonably available. For example, discount or less than first-class accommodations are considered not reasonably available where such accommodations would: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. However, in order for air fare costs in excess of the lowest available commercial discount fare or other less then first-class commercial air fare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

(2) *Air travel by other than commercial carrier.* "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance and other related costs. Costs of travel via contractor-owned, -leased, and -chartered aircraft shall not exceed the cost of commercial air travel accommodations, unless the contractor can demonstrate that costs in excess of such amounts are necessary for contract performance and that the increase in cost, if any, in comparison with alternative means of transportation is commensurate with the advantage gained.

* * * * *

5. Subsection 970.3102–19 is added to read as follows:

970.3102–19 Public relations and advertising.

(a) "Public relations" means all functions and activities dedicated to:

(1) Maintaining, protecting, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term "public relations" includes activities associated with areas such as advertising, customer relations, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) below regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) above.

(d) The only advertising costs that are allowable are those specifically required by contract, approved in advance by the contracting officer, or that arise from requirements of the contract and that are exclusively for:

(1) Recruiting personnel required for contract performance;

(2) Acquiring scarce items for contract performance;

(3) Disposing of scrap or surplus materials acquired for contract performance; or

(4) The transfer, by DOE laboratories, of federally owned or originated technology to State and local governments and to the private sector.

Costs of this nature are allowable to the extent that they are determined by the contracting officer to be reasonable, necessary, and incident to contract performance.

(e) Allowable public relations costs includes the following:

(1) Costs specifically required by contract, or approved in advance by the contracting officer.

(2) Costs of—

(i) Responding to inquiries on company policies and activities.

(ii) Communicating with the public, press, stockholders, creditors, and customers, and

(iii) Conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, environmental impact of plant operations, etc.

(3) Administrative costs of participation in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, etc.), exclusive of contractor contributions and donations which are unallowable (see 970.5204–13(e)(8) and 970.5204–14(e)(6)).

(4) Costs of plant tours and open house (but see paragraph (f)(5) below).

(f) Unallowable public relations and advertising costs include the following:

(1) All advertising costs other than those specified in paragraph (d) above.

(2) Costs of air shows and other special events, such as conventions and trade shows including:

(i) Cost of displays, demonstrations and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.

(3) Costs of sponsoring meetings, symposia, seminars, and other special events when the principal purpose of the event is not of benefit to the DOE mission.

(4) Costs of ceremonies such as corporate celebrations and new product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to benefit the contractor's organization by calling favorable public attention to the contractor and its activities.

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

(8) All public relations costs, other than those specified in paragraph (e) above, whose primary purpose is to benefit the contrator's organization by promoting the sale of products or services by stimulating interest in a product or product line or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services. Nothing in this paragraph (f)(8) modifies the express unallowability of costs listed in paragraphs (f)(2) through (f)(7). The purpose of this paragraph (f)(8) is to provide criteria for determining whether costs not specifically identified should be unallowable.

(6) Subsection 970.3102-20 is added to read as follows:

970.3102-20 Defense of fraud proceedings.

(a) *Definitions.*

"Costs," as used in this subsection, include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; the salaries and wages of employees, officers, and directors; and any of the foregoing costs incurred before commencing the formal judicial or administrative proceedings which bear a direct relationship to the proceedings.

"Fraud," as used in this subsection, means—

(1) Acts of fraud or corruption or attempts to defraud the Government or to corrup its agents;

(2) Acts which constitute a cause for debarment or suspension (see Federal Acquisition Regulation 9.406-2(a) and 9.407-2(a)): and

(3) Acts which violate the False Claims Act, 31 U.S.C. 3739-3731, or the Anti-kickback Act, 41 U.S.C. 51 and 54.

(b) Costs incurred in connection with defense of any—

(1) Criminal or civil investigation, grand jury proceeding, or prosecution;

(2) Civil litigation:

(3) Suspension or debarment proceedings; or

(4) Similar proceedings (including those associated with the filing of any false certification), or any combination of the foregoing, brought by the Government against a contractor, its agent or employee, are unallowable when the charges, which are the subject of the investigation, proceedings, or prosecution, involve fraud or similar offenses (including filing of a false certification) on the part of the contractor, its agent or employee, as defined in paragraph (a) above, and result in conviction (including conviction entered on a plea of nolo contendere), judgment against the contractor, its agent or employees, or decision to debar or suspend, or are resolved by consent or compromise.

(c) In circumstances where the charges of fraud are resolved by consent or compromise, the parties may agree as to the extent of allowability of such costs as a part of such resolution.

(d) Costs which may be unallowable under this subsection, including directly associated costs, shall be differentiated and accounted for by the contractor so as to be separately identifiable. During the pendency of any proceeding or investigation covered by paragraph (b) above, the contracting officer should generally withhold payment of such costs. However, the contracting officer may in appropriate circumstances provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if a conviction or judgment is rendered against it.

970.3102 Contract clause [Redesignated as 970.3103]

7. Section 970.3102, entitled "Contract clauses," is amended by correcting the section number from "970.3102" to "970.3103."

8. In subsection 970.5204-13, the clause is amended by revising subparagraphs (e)(1), (e)(8), (e)(11), (e)(12), (e)(27), and (e)(31), and by adding new subparagraph (e)(33) and (e)(34) to read as follows:

970.5204-13 Allowable costs and fixed-fee (CPFF management and operating contracts).

* * * * *

(e) * * *

(1) Advertising and public relations costs designed to promote the contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, except those advertising and public relations costs: (i) Specifically required by the contract, (ii) approved in advance by the contracting officer as clearly in furtherance of work performed under the contract, or (iii) advertising costs that arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance disposing of scrap or surplus materials, or the transfer, by DOE laboratories, of federally owned or originated technology to State and local governments and to the private sector.

* * * * *

(8) Contributions and donations, including cash, contractor-owned property and services, regardless of the recipient.

* * * * *

(11) Entertainment, including costs of amusement, diversion, social activities; any directly associated costs such as tickets to shows or sports events, meals lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization; except the costs of such recreational activities for on-site employees as may be approved by the contracting officer or provided for elsewhere in the contract.

* * * * *

(12) Fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

* * * * *

(27) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract and the cost of which exceeds the lowest available commercial discount air fare or other less than first-class (standard, coach, or equivalent) commercial air fare. The cost of air travel in excess of the lowest available commercial discount fare or other less than first-class commercial air accommodations is unallowable, except when such accommodations: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. However, in order for air travel costs in excess of the lowest available commercial discount fare or other less than first-class commercial air fare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

* * * * *

(31) Lobbying costs, except the cost of lobbying activities, if any, which were specified in the contract or approved in advance by the contracting officer. Annually when submitting a cumulative claim for net costs incurred under this contract (i.e., Voucher Accounting For Net Expenditures Accrued or annual cost statement for non-integrated contractors), total unallowable lobbying costs shall be separately identified and excluded from such claims. The contractor shall separately certify, as part of its annual allowable cost representations that

it has not claimed for reimbursement under this contract the cost of any unallowable lobbying activity.

* * * * *

(33) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the Government where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(34) Costs of alcoholic beverages.

9. In subsection 970.5204–14, the clause is amended by revising subparagraphs (e)(1), (e)(6), (e)(9), (e)(10), (e)(24) and (e)(29), and by adding new subparagraphs (e)(31) and (e)(32) to read as follows:

970.5204–14 Allowable costs and fixed fee (Support Contracts).

* * * * *

(e) * * *

(1) Advertising and public relations costs designed to promote the contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, except those advertising and public relations costs: (i) Specifically required by the contract, (ii) approved in advance by the contracting officer as clearly in furtherance of work performed under the contract, or (iii) advertising costs that arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance disposing of scrap or surplus materials, or the transfer, by DOE laboratories, of federally owned or originated technology to State and local governments and to the private sector.

* * * * *

(6) Contributions and donations, including cash, contractor-owned property and services, regardless of the recipient.

* * * * *

(9) Entertainment, including costs of amusement, diversion, and social activities, and any directly associated costs such as tickets to shows or sports events, meals lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization; except the costs of such recreational activities for on-site employees as may be approved by the contracting officer or provided for elsewhere in the contract.

* * * * *

(10) Fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State and local or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

* * * * *

(24) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract and the cost of which exceeds the lowest available commercial discount air fare or other less than first-class (standard, coach, or equivalent) commercial air fare. The cost of air travel in excess of the lowest available commercial discount fare or other less than first-class commercial air accommodations is unallowable, except when such accommodations: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. However, in order for air travel costs in excess of the lowest available commercial discount fare or other less than first-class commercial air fare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

* * * * *

(29) Lobbying costs, except the cost of lobbying activities, if any, which were specified in the contract or approved in advance by the contracting officer. Annually when submitting a cumulative claim for net costs incurred under this contract (i.e., Voucher Accounting For Net Expenditures Accrued or annual cost statement for non-integrated contractors), total unallowable lobbying costs shall be separately identified and excluded from such claims. The contractor shall separately certify, as part of its annual allowable cost representations that it has not claimed for reimbursement under this contract the cost of any unallowable lobbying activity.

* * * * *

(31) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the Government where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(32) Costs of alcoholic beverages.

[FR Doc. 86–4496 Filed 3–3–86; 8:45 am]

BILLING CODE 6450–01–M

Notices

Federal Register
Vol. 51, No. 42
Tuesday, March 4, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Modification of 1986 Sugar Import Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice changes the 1986 sugar import quota year from the period December 1, 1985 through September 30, 1986 to the period December 1, 1985 through December 31, 1986.

EFFECTIVE DATE: March 4, 1986.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447-2916.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4941, dated May 5, 1982, amended Headnote 3 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS) in part to authorize the Secretary of Agriculture to amend the quota period for sugar imported into the United States after consulting with the U.S. Trade Representative and the Department of State if the Secretary determines such action is appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

For the 1986 quota year the quota level was set at 1,722,000 short tons, raw value, and the quota period was established as December 1, 1985–September 30, 1986 (50 FR 37887).

This notice sets forth the change to the 1986 quota period made by the Secretary to the period December 1, 1985 through December 31, 1986.

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 3, subpart A, part 10, schedule 1 of the TSUS, after consultations with the U.S. Trade Representative and the Department of State, I have changed the 1986 sugar import quota year from the period December 1, 1985 through September 30, 1986 to the period December 1, 1985 through December 31, 1986.

I have determined that this change in the sugar import quota year gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

In conformity with the above, paragraph (a)(i) of Headnote 3, subpart A, part 10, schedule 1 of the TSUS is modified to read as follows:

3. (a)(i) The total amount of sugars, sirups and molasses described in items 155.20 and 155.30, the products of all foreign countries entered, or withdrawn from warehouse, for consumption between December 1, 1985 and December 31, 1986, inclusive, shall not exceed in the aggregate 1,722,000 short tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this headnote (the total base quota amount) shall be 1,720,000 short tons, raw value, and the remaining 2,000 short tons, raw value, may only be used for the importation of "specialty sugars," as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this headnote.

Signed at Washington, DC on February 27, 1986.

Daniel G. Amstutz,

Acting Secretary of Agriculture.

[FR Doc. 86-4675 Filed 3-3-86; 8:45 am]

BILLING CODE 3410-10-M

Food and Nutrition Service

Availability of Surplus Commodities; Fiscal Year 1986

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces that for the period October 1, 1985 through September 30, 1986, the Department of Agriculture will continue to make available surplus cheese, butter, nonfat dry milk, honey, rice, flour and corn meal to requesting State agencies for distribution to eligible recipients. The foods are being made available by this announcement under the Temporary Emergency Food Assistance Program (TEFAP) authorized under section 202 of the Temporary Emergency Food Assistance Act of 1983 (Title II of Pub. L. 98-8, as amended).

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Park Office Center, Alexandria, Virginia 22302, Telephone (703) 756-3660.

EFFECTIVE DATE: October 1, 1985.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512. It has been classified as "nonmajor", because it meets none of the three criteria in the Executive Order; the action will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs, and will not have a significant impact on competition, employment, productivity, innovation, or the ability of U.S. enterprises to compete.

This is not a rule as defined in the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq), and thus is exempt from the provisions of that Act. The purpose of the action is to notify States of the types and quantities of foods to be made available for household distribution during Fiscal Year 1986.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review.

The Secretary anticipates that the following commodities and amounts will be made available during Fiscal Year 1986 to agencies of State governments which request them for distribution to eligible recipients: cheese, 420 million pounds; flour, 132 million pounds; rice, 132 million pounds; nonfat dry milk, 96 million pounds; honey, 78 million pounds; butter, 72 million pounds; corn meal, 36 million pounds.

The actual types and quantities of commodities made available by the Department may differ from these estimates. The foods made available under this notice will be targeted to needy persons, including low-income and unemployed persons. These foods are being offered under the provisions of Title II of Pub. L. 98-8, as amended by

Pub. L. 99–198, the Food Security Act of 1985, approved December 23, 1985.

(Catalog of Federal Domestic Assistance No. 10.550)

Authority: Sec. 210(c), Pub. L. 98–8, as amended.

Dated: February 27, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 86–4656 Filed 3–3–86; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF COMMERCE

[Docket Nos. 2636–01 and 2636–02]

Actions Affective Export Privileges; Alan C.T. Simmons, Digital Resources, Ltd.; Decision and Order

Appearance for Resopndents: Alan C.T. Simmons, Keasen Farm, St. Ive Liskard, Cornwall, England, and Digital Resources, Ltd, 34th Pezikow Syntagmatos 17, Pireas, Greece.

Appearance for Government: Margo E. Jackson, Esq., Office of the Assistant General, Counsel for Export Administration, U.S. Department of Commerce, Washington, DC 20230.

Preliminary Statement

A proceeding was initiated on April 14, 1983, against Alan C.T. Simmons, Keasen Farm, St. Ive Liskard, Cornwall, England, individually and doing business as both Amber Computer Services, Mesogian 174, Holargos, Athens, Greece, and Digital Resources, Ltd., 34 Pezikow Syntagmatos 17, Pireas, Greece, by the issuance of a charging letter by the Director, Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce (the Agency). The Agency received confirmation that the charging letters was delivered to Respondents by a return receipt of certified mail. The Respondents were charged with violating the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Act Amendments of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the Act), and the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1985)) (the Regulations).

In the charging letter, OEE alleged that Respondents exported, or caused to be reexported from Greece to Sweden, and subsequently from Sweden to the Union of Soviet Socialist Republic (U.S.S.R.), 16 shipments of U.S.-origin computers and computer equipment without obtaining the reexport authorization which Respondent knew was required by 15 CFR 374.1 in 15 CFR 387.2, 387.4, and 387.6. Respondent was also charged with concealing material facts from Agency's Office of Export Administration in connection with the 16 transactions, in violation of 15 CFR 387.5, and causing, aiding, abetting, counseling, commanding, inducing, procuring, or permitting the doing of the above-described acts, in violation of 15 CFR 387.2.

Respondents failed to answer the charging letter as required by 15 CFR 388.7(a). Under the Regulations, failure to answer the charging letter constitutes an admission of those charges by Respondents. 15 CFR 388.8.

In accordance with 15 CFR 388.8, the Agency submitted evidence to support the allegations contained in the charging letter. The undersigned Administrative Law Judge considered the evidence and my findings are detailed below.

From August 8, 1980, and February 23, 1982, Respondent reexported or caused to be reexported 16 shipments of U.S.-origin computers and computer equipment from Greece to Sweden, and then from Sweden to the U.S.S.R., knowing that the reexport authorization was required by the Regulations had not been obtained. In connection with these 16 transactions, Respondent unlawfully concealed material facts from the Agency's Office of Export Administration and caused, aided, abetted, counseled, commanded, induced, procured, or permitted the doing of the illegal acts described above.

Based on the foregoing, I find that Respondent engaged in export activities in violation of the Act and the Regulations, as alleged in the charging letters. I find that an Order denying export privileges to Alan C.T. Simmons, Amber Computer Services and Digital Resources, Ltd., for a period ending 30 years from the date this Order becomes final is reasonably necessary to protect the public interest and achieve effective enforcement of the Act and the Regulations.

Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, *it is ordered:*

I. All outstanding validated export licenses in which any Respondent appears or participates in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. For a period of 30 years from the date this Order becomes final, Respondents, their successors or assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating, directly or indirectly, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application; (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith; (c) in obtaining or using any validated or general export license or other export control document; (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States or to be exported; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities or technical data which are subject to the Act and the Regulations.

III. Such denial of export privileges shall extent not only to Respondents, but also to their agents and employees and to any successors. After notice and opportunity for comments, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. No person, firm corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of the Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, in any manner or capacity, on behalf of or in any association with any Respondent or related party, or whereby any Respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for any

Respondent or related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to section 13(c) of the 1985 Amendments to the Export Administration Act.

Dated: February 25, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86-4658 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-DT-M

[Docket Nos. 1613-01, 1613-02, and 1613-03]

Actions Affecting Export Privileges; Spawr Optical Research, Inc.; Walter J. Spawr, Frances A. Spawr; Decision and Order

Appearance for Respondent: Steven R. Perles, Esq., Suite 400, 1320 19th Street, NW., Washington, DC 20036

Appearance for Government: Thomas C. Barbour, Esq., Office of General Counsel, Room H3845, U.S. Department of Commerce, Washington, DC 20230.

Preliminary Statement

On May 1, 1981, a charging letter was issued by the Director, Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce (the Agency) against Walter J. Spawr, Frances A. Spawr, and Spawr Optical Research, Inc., (hereinafter jointly referred to as Respondents) 1527 Pomona Road, Corona, California 91720. The Respondents were therein charged with violating the Export Administration Act of 1969, as amended (currently codified at 50 U.S.C. app. 2401–2420 (1982) (the Act), and the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1985)) (the Regulations).

The initial aspect of this proceeding, the issuance of a still effective Temporary Denial Order on February 24, 1981, has lingered, unresolved for almost 5 years, filling 6 volumes of files and producing a cumbersome, convoluted record.[1] In the 1981 charging letter, OEE alleged that Respondents violated the Act and the Regulations by knowingly conspiring to export and in fact did export and reexport U.S.-origin copper water-cooled laser mirrors used in high-power CO_2 lasers from the United States, the Federal Republic of Germany, and Switzerland to the Union of Soviet Socialist Republics (U.S.S.R.) without obtaining validated export licenses as required by § 372.1(b) of the Regulations or reexport authorization as required by § 374.1 of the Regulations, and by falsifying and concealing material facts on export control documents.

The charging letter and temporary denial order against Respondents initiated administrative proceedings for the same violations upon which they had been indicted in a prior criminal proceeding. At the criminal trial, Spawr Optical Research was found guilty on all 14 charges in the indictment: For misrepresenting shipment values in Shipper's Export Declarations submitted to the U.S. Customs Service in 1976 (counts 1 and 2) and 1977 (counts 3–6); conspiracy to export without a license (count 10); and exporting laser mirrors to Germany and Switzerland with the knowledge that the mirrors would be shipped to the U.S.S.R. without obtaining the required validated export license in 1976 (counts 7–9) and 1977 (counts 11–14). Frances Spawr was found guilty on counts 1–6 and 10–14 and Walter Spawr was found guilty on counts 10–14. *United States* v. *Spawr Optical Research, Inc.*, CR 80–789 (WMB) (C.D. Calif. 1980). Although Respondents pursued the appeal of their criminal conviction through the judicial process, the convictions were upheld by the Ninth Circuit, and Respondents' petition to the Supreme Court to review their criminal convictions was denied. *United States* v. *Spawr Optical Research, Inc.*, 685 F.2d 1076 (9th Cir. 1982), *cert. denied*, 461 U.S. 905 (1983).

The Agency filed a Motion for Summary Judgment in this administrative proceeding on October 10, 1984, asserting Respondents' liability for the violations alleged in the charging letter, to the extent Respondents were found guilty on the same criminal charges, and seeks the imposition of a period of denial of export privileges. In the Motion for Summary Judgment the Agency chose not to pursue those charges in the charging letter that did not correspond to the convictions in the criminal proceeding. In effect, this has resulted in the withdrawal of counts 7–9 against Frances Spawr and the withdrawal of counts 1–9 against Walter Spawr. The Motion for Summary Judgment was granted on October 10, 1985, but a period was allowed for comments, modifications, or alterations on the proposed Order submitted therewith.

Discussion

Respondents contend that under due process they are entitled to an evidentiary hearing and should not be collaterally estopped. They claim that the Agency improperly rejected their application for a license to export their commodity and that any Denial Order must be linked to the national security, foreign policy, or short supply objectives of section 3(10) of the Act, 50 U.S.C. app. 2401–2402 (1982), as amended in 1985, Pub. L. 99–64, 99 Stat. 120 (1985). Although Respondents agree that a criminal conviction constitutes estoppel in favor of the United States in a subsequent civil proceeding regarding those matters determined by the judgment in the criminal case, they argue that the "necessary" statutory elements referred to above were not established at the criminal trial and, therefore, the matter is still open for determination. *See* Respondents' Reply to the Department's Proposed Order, November 2, 1985. In effect, Respondents claim a prejudicial error occurred at the criminal trial and seek to have this tribunal review the criminal proceeding and engage in an analysis and determination of the level of technology pertinent to Respondents' laser mirrors.

Although Respondents' due process claim has superficial appeal, I find it devoid of merit before this tribunal. The Agency expressly denied Respondents' application for export licenses. The appropriate mechanism to challenge the validity of that denial is through a license denial appeal. That process is outlined in Part 389, Title 15 of the Code of Federal Regulations. This tribunal is not the proper forum before which to address the validity of the regulations or the denial of export licenses.[2] Respondents not only failed to appeal their license denial through the necessary channels but failed to prevail at the criminal proceeding as well.

The agency proceeding involved here is one of limited scope. The purpose of

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[1] The events charged here occurred in 1976 and 1977, almost a decade ago. The deplorable delay in processing this and too many other cases is both unexplainable and unexplicable.

[2] Moreover, the inclusion of Respondents' equipment on the commodity control list and the license denial more than support an inference that the statutory and regulatory requirements regarding evaluation of a commodity and application for export were met with respect to the particular transactions involved here. In any event, the appraisal and review of the very technical determinations respecting what should or should not be placed on the control lists and what should be licensed for export, to particular destinations, is better left to the license appeal process.

this type of administrative proceeding is to adjudicate facts. Entitlement to a hearing is predicated upon the determination of such issues as whether the acts charged have been committed, and, if so, whether the acts constitute a violation. Due process cases presuppose that oral hearings and other trial procedures are useful primarily for resolving questions of fact. Due process does not require an agency to hold a hearing if a question of law is the only dispute. *See Mackey* v. *Montrym*, 443 U.S. 1, 13–7 (1979). Respondents had abundant opportunity to present their case before a United States District Court in a criminal proceeding with the full panoply of protected rights attendant to such a proceeding. A jury heard the facts (the same facts upon which the Agency's civil charges are based), deliberated the case, and concluded Respondents committed the charged acts which constitute violations of the Act and the Regulations. This forum rightfully relies on the criminal process and does not exist to question the factual determination made under the high, beyond a reasonable doubt, standard of proof applicable to those criminal proceedings. Since the factual issues underlying this administrative proceeding have already been resolved at the prior criminal trial, no appropriate issues exist within the jurisdictional ambit of this tribunal which warrant an evidentiary hearing. This forum does not exist to "try" the regulations or licensing determinations. The criminal conviction of Respondents estops them from contesting in this proceeding any element necessarily established at the criminal trial. *See Considine* v. *United States*, 683 F.2d 1285, 1286 (9th Cir. 1982); *United States* v. *Podell*, 572 F.2d 31, 35 (2nd Cir. 1978); *Berdick* v. *United States*, 612 F.2d 533, 537 (Ct. Claims 1979).

Respondents contend that Denial Orders may not be used as a punitive measure and that before a Denial Order can issue, the Agency must show that the export of Respondents' commodity, deemed a national security threat under section 3(10) in the mid-1970's, continues to constitute such a threat in the mid-1980's.

Whether the effect of denial of export privileges may be or is punitive is not for consideration here. The evaluation that the export of a commodity constitutes a national security threat is part of the process in which criteria are generated to identify exportable from non-exportable products to particular countries. Further, the law that is to be applied is the law at the time the violation occurred. A criminal court found that in 1976 and 1977, Respondents committed the acts charged. Respondents' criminal convictions warrant denial of their export privileges in order to prevent further exports of advanced technology. Although this may have a punitive effect, it is part of the whole package of the statutes and regulations enacted and promulgated to protect this nation from those who would arrogate to themselves national security and foreign policy decisions. Respondents have demonstrated that they cannot be trusted and are, in my assessment, scoundrels of judicially established reputation. In a United States criminal court they were found to have displayed a contemptuous disregard for the statutes and regulations designed to protect national interests. It is appropriate that Respondents be denied export privileges and be barred from further export transactions.

Respondents request that a definition of permitted "domestic sales" be incorporated into the Order. The language proposed by agency counsel in response to Respondents' request is a near-verbatim extract of a portion of correspondence dating from 1966 which was recently provided to the parties by this Office in this proceeding.[3]

It is not appropriate to attempt to furnish a simple definition for a complex problem in individual cases. These Respondents are not to be singled out and furnished with language that is generally applicable to the export community at large. The language in the usual Order accurately and clearly reflects that Respondents' export-related transactions only are affected, not legitimate domestic sales. The general guidelines on domestic sales quoted above will be applied to these and other Respondents as well. When clarification of a particular transaction is warranted, separate rulings will issue upon request. I would further recommend that the Agency, following solicitation of public comments, promulgate a rule on this item of significant interest to the export community.

Findings

As my findings of fact, I incorporate the findings made by the United States Court of Appeals for the Ninth Circuit in *United States v. Spawr Optical Research, Inc., supra.* note 1,1083. Based upon the record before me including those findings of fact and the criminal conviction of Respondents,[4] I hereby draw the following conclusions of law:[5]

On or about July 9, 1976 (Count 1), July 16, 1976 (Count 2), February 9, 1977 (Count 3), February 10, 1977 (Count 4), February 11, 1977 (Count 5, and February 14, 1977 (Count 6), Frances A. Spawr and Spawr Optical Research, Inc., falsified and concealed material facts on export control documents accompanying exports of laser mirrors

[3] The Agency in its Response to Respondents' Reply, December 5, 1985, proposed that the following paragraph be substituted for Paragraph IV of the proposed Order:

IV. This order does not preclude Respondents from engaging in legitimate domestic sales. Respondents may sell goods in the United States to other American firms even though the Respondents may know that the other firms intend to export the goods from the United States, provided that the Respondents sell at the same price as they would sell to any other domestic firm, make no special profit from the fact that the transaction is for export, do not share in the fruits of the export transaction directly or indirectly as a joint venturer or otherwise, do not manufacture goods specifically for export or in accordance with an order from a foreign buyer, and the foreign order which the other American firm is filling is not one received directly, or indirectly, through the recommendation or other communication of the Respondents. In addition, in legitimate domestic sales transactions, the Respondents must sell and deliver on a basis that will not involve them in the export financing, transporting, forwarding, or other servicing of the goods for shipment from the United States. In other words, the Respondents's sale must be on a wholly-domestic basis.

The complete language provided to the parties by this Office, which is an excerpt from a letter: Schaeffer to Covington and Burling, in the Groma Metal case, January 9, 1961, reads as follows:

Generally speaking, a respondent may sell goods in the United States to another American firm even though the respondent may know that the other firm intends to export the goods from the United States, provided that the respondent sells at the same price as he would sell to any other domestic firm, makes no special profit from the fact that the transaction is for export, does not share in the fruits or the export transaction directly or indirectly as a joint venturer or otherwise, and the foreign order which the other American firm is filling is not one received through the recommendation of the respondent. In addition, in such a case, the respondent must sell and deliver on a basis that will not involve him in the export financing, transporting, forwarding, or other servicing of the goods for shipment from the United States. In other words, the respondent's sale must be on a wholly domestic basis.

Where a respondent knows, or has reason to suspect, that goods which he is selling to another American firm are intended for export to one of the respondent's regular customers, he would under the terms of the Export Denial Order e prohibited from acting as the supplier. In transactions of this nature, the BFC has always considered that the respondent is, in essence, doing indirectly through another American firm what he is forbidden by the order to do directly.

[4] I have been informed by counsel that the District Court for the Central District of California has recently granted Respondents' petition to re-open their criminal case. Because this Decision is based in significant part on the prior criminal convictions, if the District Court overturns any of these convictions, Respondents may petition this tribunal to re-open this administrative proceeding for an independent adjudication of the factual issues.

[5] Cross-references to the counts of indictment upon which Respondents were found guilty have been provided for each conclusion of law. *See United States v. Spawr Optical Research, Inc., supra.*

from the United States, in violation of § 387.5 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1985)) (the Regulations).[6]

2. On or about June 1, 1976 (Count 7), July, 1976 (Count 8), and July 16, 1976 (Count 9), Spawr Optical Research, Inc., exported and caused to be exported copper water-cooled laser mirrors from the United States to the Federal Republic of Germany without obtaining the required validated export license from the Department, with the knowledge and intent that the mirrors would be reexported to the Union of Soviet Socialist Republics (U.S.S.R.) without authorization from the Department, in violation of § 387.6 of the Regulations.

3. During the period from October 1976 to late February 1977, Walter J. Spawr, Frances A. Spawr and Spawr Optical Research, Inc., after the Department had rejected an export license application filed by Spawr Optical Research, Inc., to export copper water-cooled laser mirrors to the U.S.S.R., conspired to violate the Regulations. The conspiracy involved the export of copper water-cooled laser mirrors to Fracht A.G., a freight forwarder in Switzerland, with the knowledge and intent that the laser mirrors would be diverted to the U.S.S.R. without the required validated export license or reexport authorization required by the Regulations, in violation of §§ 387.3 and 387.4 of the Regulations (Count 10).

4. On or about February 9, 1977 (Count 11), February 10, 1977 (Count 12), February 11, 1977 (Count 13), and February 14, 1977 (Count 14), Walter J. Spawr, Frances A. Spawr, and Spawr Optical Research, Inc., exported and caused to be exported copper water-cooled laser mirrors from the United States to Fracht A.G. in Switzerland with the knowledge and intent that the mirrors would be reexported to the U.S.S.R. without the required export licenses or reexport authorization required by the Regulations, in violation of § 387.6 of the Regulations.

Conclusion

Based on the foregoing, I concur in the proposal of Agency counsel that an Order denying all export privileges to Respondents for a period of 6 years from the date of this order is appropriate in this proceeding. I am not without some reservation about this time period. In the decade since I was previously active in these adjudications, the use of fixed numbers of years has become common. My view is that the conduct of individuals or companies that export products such as those described here, after an export license has been specifically denied, demonstrates such a defiance of the laws of the United States as to be incompatible with automatic restoration of export privileges. That will be my approach hereafter.

Order

Therefore, pursuant to the authority delegated to me by § 388.16 of the Regulations, it is ordered that:

I. All outstanding validated export licenses in which the Respondents appear or participate, in any manner or capacity, be revoked and returned to the Office of Export Administration for cancellation.

II. For a period of 6 years from the date that this Order becomes final, the Respondents, their successor or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application; (b) in the preparation or filing of any export license application or reexport authorization, or of any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control document; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Export Administration Act of 1979 (50 U.S.C. app. 2401–2402 (1982)), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (1985), and the Regulations.

III. Such denial of export privileges shall extend not only to the Respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall with respect to U.S.-orgin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the Respondents or any related party, or whereby the Respondents or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the Respondents or any related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to section 13(c) of the 1985 Amendments to the Export Administration Act. At that time the Temporary Denial Order issued against the Respondents shall, by its terms, be terminated.

Dated: January 27, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86–4659 Filed 3–3–86; 8:45 am]

BILLING CODE 3510-DT-M

[6] During the periods alleged in the Charging Letter prior to September 30, 1976, the Regulations were issued pursuant to the Export Administration Act of 1969, as amended (50 U.S.C. app. 2401, *et seq.* (1976)). From October 1, 1976 to June 7, 1977, the Regulations were continued in effect under Executive Order 11940, 3 CFR Part 150 (1976 Comp.).

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Commerce.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on March 20, 1986. The Presidential Board of Advisors was established on August 8, 1985 to advise the President and Secretary of Commerce, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

TIME AND PLACE: Thursday, March 20, 1986, 9:30 to 11:00 a.m., at the Red Cross Building, Hall of Governors, 18th and E Streets, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Council, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Dated: February 26, 1986.

Nancy J. Olson,

Director, Office of Business Liaison.

[FR Doc. 86–4673 Filed 3–3–86; 8:45 am]

BILLING CODE 3510–BW–M

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary.

SUMMARY: The Communications Committee of the Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on March 13, 1986. The Presidential Board of Advisors was established on August 8, 1985 to advise the President and Secretary of Commerce, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

TIME AND PLACE: Thursday, March 13, 1986, 3:00 p.m., at the National Association of Broadcasters, VTW Room, 1771 N Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Council, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Dated: February 26, 1986.

Nancy J. Olson,

Director, Office of Business Liaison.

[FR Doc. 86–4674 Filed 3–3–86; 8:45 am]

BILLING CODE 3510–BW–M

International Trade Administration

[A–337–001]

Sodium Nitrate From Chile; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the Olin Corporation, the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on sodium nitrate from Chile. The review covers the one known exporter of this merchandise to the United States and the period March 16, 1983 through February 29, 1984. The review indicates the existence of *de minimis* dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 4, 1986.

FOR FURTHER INFORMATION CONTACT: Linda Pasden or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 38527) an early determination of antidumping duty for the antidumping duty order on sodium nitrate from Chile (48 FR 12580, March 25, 1983). In accordance with § 353.53a(a) of the Commerce Regulations, the Olin Corporation, the petitioner, requested an administrative review. The Department published in the **Federal Register** (50 FR 48825, November 27, 1985) a notice of initiation of antidumping duty administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of industrial grade sodium nitrate (98 percent or more pure), currently classifiable under item 480.2500 of the Tariff Schedules of the United States Annotated. The review covers the one known exporter of this merchandise to the United States, Socieded Quimica Y Minera de Chile S.A. ("SQM"), and the period March 16, 1983 through February 29, 1984.

United States Price

In calculating United States price the Department used exporter's sales price, as defined in section 772 of the Tariff Act. Exporter's sales price was based on the delivered or f.o.b. packed or unpacked price to an unrelated purchaser in the United States. Where applicable, we made deductions for discounts, foreign inland freight, marine insurance, ocean freight, handling charges, U.S. brokerage charges, credit, advertising and indirect selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a basis for comparison. Home market price was based on the delivered or the f.o.b. packed price with adjustments, where applicable, for inland freight, credit, differences in packing, and for indirect

selling expenses to offset U.S. selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 0.07 percent exists for SQM for the period March 16, 1982 through February 29, 1984.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments or hearings.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, since the margin for SQM is less than 0.5 percent and therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties, as provided for by § 353.48(b) of the Commerce Regulations, on shipments of Chilean industrial sodium nitrate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: February 24, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-4646 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket Numbers 2636-01 and 2636-02]

Actions Affecting Export Privileges; Alan C. T. Simmons, Digital Resources, Ltd.; Order

On February 25, 1986, the Administrative Law Judge entered a Default Order in the above matter, which was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Act Amendments of 1985, Pub. L. 99–64, 99 Stat. 120) (July 12, 1985) and 15 CFR 388.8(a) for final action.

Having examined the record and based on facts adduced in this case, I affirm the Order of the Administrative Law Judge, which constitutes the final agency action in the case.

Dated: February 26, 1986.

Paul H. Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-4660 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-DT-M

[Docket Numbers 1613-01, 1613-02, and 1613-03]

Actions Affecting Export Privileges; Walter J. Spawr, Frances A. Spawr, Spawr Optical Research, Inc.; Order

On January 27, 1986, the Administrative Law Judge entered an Order denying Respondent's request for an evidentiary hearing on the issue of whether a violation of the "National Security" requirement of the Act and regulations existed or could be established by the agency, and further directed the Respondents be denied export licenses for 6 years. The Order was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 as amended, for final action.

Having examined the record including the submissions of counsel; based on facts adduced and applicable law, I concur in the determination of the Administrative Law Judge that the placement of products on the Commodity Control List, as well as the determination of the countries and parties to whom exports may be made, is a matter for determination in the licensing, rather than in the adjudication process. I affirm the Order of the Administrative Law Judge.

This constitutes the final agency action in the case.

Dated: February 26, 1986.

Paul H. Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-4661 filed 3-3-86; 8:45 am]

BILLING CODE 3510-DT-M

Decision on Application for Duty-Free Entry of Scientific Instrument; North Dakota State Soil Conservation Committee

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85–208R. Applicant: North Dakota State Soil Conservation Committee, Bismarck, ND 58505. Instrument: Electromagnetic Ground Conductivity Meter, Model EM–38 and Accessories. Manufacturer: Geonics Ltd., Canada. Original notice of this resubmitted application was published in the **Federal Register** of July 9, 1985.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides for in situ measurement of ground conductivity in milliohms per meter. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Leonard E. Mallas,

Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 86-4647 Filed 3-3-86; 8:45am]

BILLING CODE 3510-05-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Rensselaer Polytechnic Institute

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85–297. Applicant: Rensselaer Polytechnic Institute, Troy, NY 12180–3590. Instrument: Surface Forces Apparatus System. Manufacturer: Anutech Pty., Ltd.,

Australia. Intended use: See notice at 50 FR 41381.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can measure force-distance relationships between solid surfaces with a force sensitivity of 10.0 nanonewtons and a distance resolution of ±0.2 nanometers. The National Bureau of Standards advises in its memorandum dated January 24, 1986 that (1) this capability is pertinent to the applicant's intended purpose and

(2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Leonard E. Mallas,

Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 86-4648 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Rhode Island

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 14 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-301. Applicant: University of Rhode Island, Narragansett, RI 02882. Instrument: Mass Spectrometer, Model MAT 251 with Accessories. Manufacturer: Finnigan, West Germany. Intended use: See notice at 50 FR 45138.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument guarantees (1) a reproductibility and zero enrichment of $\pm 0.025\,‰$ for $\delta^{18}O$ and $\delta(O_2N_2)$ and $\pm 0.010\,‰$ for $\delta^{15}N$ and (2) an internal precision for $\delta^{13}C$ analysis of CO_2 of $\pm 0.15\,‰$ for samples containing 0.05 umol CO_2. The National Bureau of Standards advises in its memorandum dated February 4, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value of the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Leonard E. Mallas,

Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 86-4649 Filed 3-3-86; 8:45 am]

BILLING CODE 3910-DS-M

Minority Business Development Agency

Financial Assistance Application Announcement; New Mexico

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a three (3) year period, subject to available funds and satisfactory performance. The cost of performance for the first twelve (12) months is estimated at *$165,000* for the budget period *July 1, 1986* to *June 30, 1987*. The IBDC will operate in the *State of New Mexico*.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to American Indian non-profit organizations and for-profit firms (those entities which are owned or controlled by one or more American Indian persons).

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American Indian business individuals, and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance.

The IBDC will operate for a three (3) year period with periodic review culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: The closing date for applications is *April 3, 1986*. Applications must be postmarked *On or Before April 3, 1986*.

ADDRESS: Dallas Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 1100 Commerce Street, Room 7B19, Dallas, Texas 75242-0790, (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Dennis Drayson, Business Development Specialist, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: February 24, 1986.

Melda Cabrera,

Acting Regional Director, Dallas Regional Office.

Project Specifications for Minority Business Development Centers

Fiscal Year 1986.

Program Number and Title: 11.800 (Minority Business Development Centers).

Project Name (Geographic Area or Metropolitan Statistical Area (MSA)): State of New Mexico (Indian Business Development Center).

Project Identification Number: 06-10-86010-01.

Operated By: (Firm/Organization).

Project Start and End Dates: July 1, 1986 thru June 30, 1987.

Project Duration (months): 12.

Federal Funding: (100%) $165,000.

Closing date for Submission of this Application: April 3, 1986.

Geographic Specification: The Indian Business Development Center (IBDC) shall offer assistance in the geographic area of: the State of New Mexico.

Eligibility criteria: Competition is open to American Indian Non-Profit Organizations and For-Profit Firms (those entities which are owned or controlled by one or more American Indian persons).

Project Period: The competitive award period will be approximately three (3) years

consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the IBDC's performance, and Agency priorities.

MBDA's minimum level of effort: Financial Packages: $982,000; M&TA Hours: 1,274; Procurements: $1,439,000; Number of clients: 56.

[FR Doc. 86-4520 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability of Evaluation Findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Maryland (Chesapeake Bay) and Florida (Rookery Bay) National Estuarine Sanctuary Programs. Section 312 of the Coastal Zone Management Act (CZMA) of 1972, as amended, requires a continuing review of the performance of each coastal state with respect to coastal management activities, their adherence to the terms and conditions of financial assistance awards funded under the CZMA, and carrying out the objectives of CZMA section 315 regarding the implementation of the Estuarine Sanctuary Program. The states evaluated were found to be adhering to their approved estuarine sanctuary programs. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, DC 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: February 24, 1986.

[FR Doc. 86-4597 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management Programs and Estuarine Sanctuaries; Intent To Evaluate Performance

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Louisiana Coastal Management Program (CMP); Michigan CMP; and Maine CMP and Hawaii's Waimanu National Estuarine Sanctuary; Georgia's Sapelo National Estuarine Sanctuary; and Oregon's South Slough National Estuarine Sanctuary through June 30, 1986. These reviews will be conducted pursuant to section 312 of the Coastal Zone Management Act (CZMA) which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA. Coastal zone management is funded under CZMA section 306, and the Estuarine Sanctuary Program is authorized by CZMA section 315. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. A subsequent notice will be placed in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven St., NW., Washington, DC 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: February 24, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-4598 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-08-M

Dall's Porpoise Proposed Action Plan; Availability

Pursuant to section 14(b)(2) of the North Pacific Fisheries Act of 1954 as amended (16 U.S.C. 1021 et seq.), the National Marine Fisheries Service has released to the general public its Proposed Action Plan for Dall's Porpoise for 1986. The Plan describes research studies conducted on Dall's porpoise, research plans for 1986, and management measures taken to reduce the incidental take of this species in the Japanese high seas salmon fishery.

Copies of this report are available from the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, DC 20235.

Dated: February 24, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-4626 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-22-M

National Advisory Committee on Oceans and Atmosphere; Meeting

February 25, 1986.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting Monday and Tuesday, March 17-18, 1986. The meeting will be held at 2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B-100, Washington, DC. The meeting will commence at 9:00 a.m. and end at 5:00 p.m. on Monday and commence at 8:30 a.m. and end at 3:00 p.m. on Tuesday.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95-63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and

submit such other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Monday, March 17, 1986

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 & B-100, Washington, DC.
9:00 a.m.-12:00 Noon—Plenary
9:00 a.m-9:15 a.m.
- Announcements

9:15 a.m.-9:30 a.m.
- Swearing-In Ceremony

9:30 a.m.-10:30 Noon
- Guest Speaker: Dr. Rober M. White, President, National Academy of Engineering

Topic: Emerging Issues in Oceanic and Atmospheric Affairs
10:30 a.m.-12:00 Noon
- Committee Discussion

Exclusive Economic Zone (EEZ) Report
Acid Rain Statement
12:00 Noon-1:30 p.m.—Lunch
1:30 p.m.-5:00 p.m.—Panel Meetings
- Panel 1: Roles and Missions of the National Ocean Service/National Marine Fisheries Service

Room B-100
Speakers:
Jim Drewry, Professional Staff Member, Senate Committee on Commerce, Science, and Transportation
Topic:
Ocean Services and Fisheries
Thomas Kitsos, Legislative Analyst, House Committee on Merchant Marine and Fisheries
Topic: Ocean Services
- Panel 3: Roles and Missions of the National Environmental Satellite, Data, and Information Service/Office of Oceanic and Atmospheric Research

Room 416
Speakers:
RADM J.B. Mooney, Chief of Naval Operations
Topic: Ocean Research
Dr. D. James Baker, President, Joint Oceanographic Institutions, Inc.
Topic: Satellites and Ocean Research
5:00 p.m.—Recess

Tuesday, March 18, 1986

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B-100, Washington, DC
8:30 a.m.-11:30 a.m.—Panel meeting
- Panel 2: Roles and Missions of the National Weather Service/National

Room 416
9:30 a.m.-10:30 a.m.
Speaker:
William S. Barney, Federal Coordinator for Meteorological Services and Supporting Research
Topic:
Federal Meteorological Services
11:30 a.m.-1:00 p.m.—Lunch
1:00 p.m.-3:00 p.m.—Plenary
- Committee Discussion of NOAA Study
- Old Business
- Panel Reports
- New Topics
- New Business

3:00 p.m.—Adjourn

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Acting Executive Director, Amor L. Lane, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653-7818.

Dated: February 25, 1986.

Amor L. Lane,

Acting Executive Director.

[FR Doc. 86-4458 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-12-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will convene a public meeting, March 4, 1986, from 9 a.m. to 5 p.m., and on March 5, from 9 a.m. to 1 p.m., at the Ala Moana Americana Hotel, 410 Atkinson Drive, Hibiscus Ballroom #2, Honolulu, HI. The Council will discuss progress on a limited entry concept for the bottomfish fisheries of the Northwestern Hawaiian Islands (NWHI); review the partial disapproval decision by the Agency of the Council's Spiny Lobster Amendment #3; review recommendations of the Lobster Planning Team and the Scientific and Statistical Committee on management of the NWHI fisheries, i.e. measuring for slipper lobsters, economic conditions, restructuring the fishery management plan into a framework document, closed seasons; review the 1985 lobster annual report, as well as discuss any other committee business. A detailed agenda is available from the Council's office, address below.

Also on March 4, the Council will convene a closed session (not open to the public), from 8 a.m. to 9 a.m., to discuss personnel matters. For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: February 26, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Services.

[FR Doc. 86-4678 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-22-M

[P16H]

Marine Mammals; Application for Permit; Dr. Gerald L. Kooyman, Scripps Institute of Oceanography

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dr. Gerald L. Kooyman.

b. Address: Scripps Institution of Oceanography, University of California, San Diego, La Jolla, CA 92093

2. Type of Permit: Scientific Research

3. Name of Number of Marine Mammals: Weddell seal *(Leptonychotes weddelli)* 15

4. Type of Take: To study the dive behavior and population ecology of Weddell seals.

5. Location of Activity: Terra Nova Bay, Antarctica.

6. Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 97031.

Dated: February 28, 1986.

Richard B. Roe,

Director, Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4627 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; North Wind Undersea Institute

On December 27, 1985, notice was published in the **Federal Register** (50 FR 52983) that an application had been filed by the North Wind Undersea Institute, 610 City Island Avenue, City Island, New York 10464 for a permit to acquire three (3) rehabilitated beached/stranded harbor seals *(Phoca vitulina)* from the New England Aquarium for public display.

Notice is hereby given that on February 19, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930-3799.

Dated: February 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4628 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-22-M

[P77 17]

Marine Mammals; Issuance of Permit Southwest Fisheries Center, National Marine Fisheries Center

On January 3, 1986, notice was published in the **Federal Register** (50 FR 239) that an application had been filed by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, to take up to 475 Hawaiian monk seals *(Monachus schauinslandi)* for scientific research by flipper tagging and bleach marking.

Notice is hereby given that on February 13, 1986 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 18, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4629 Filed 3-3-86; 8:45am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare Legislative Environmental Impact Statement; Small Intercontinental Ballistic Missile; Development

The United States Air Force will prepare a Legislative Environmental Impact Statement (LEIS) concerning the full-scale development of the Small Intercontinental Ballistic Missile (Small ICBM) and the selection of deployment locations for basing the missile system. Consistent with 203 of the 1986 Defense Authorization act and § 1506.8 of the Council on Environmental Quality regulations, the LEIS will be transmitted to Congress.

The Department of the Air Force will serve as the lead agency and will supervise the preparation of the LEIS. Cooperating agencies, if any, will be specified in subsequent notices to be issued by the Air Force.

The LEIS covered by this notice will be a programmatic document. It will compare, on a regional basis, the environmental impacts expected to result from the deployment of the Small ICBM in one or more of the alternative basing modes at alternative deployment locations that have been determined to be suitable.

This LEIS will be the first in a two-tiered environmental impact analysis process. The second tier, as directed by Congress, will be one or more Administrative Environmental Impact Statements to cover specifically selected sites for the deployment and peacetime operations of the Small ICBM.

The basing modes and their locations to be analyzed in the LEIS are:

a. Hard Mobile Launchers in Random Movement on Department of Defense or Department of Energy installations.

Alternative support base	Alternative deployment area
Arizona Complex	
Gila Bend Air Force Auxiliary Field or Yuma Proving Ground	Luke Air Force Range (AFR), and Yuma Proving Ground.
Florida Complex	
Eglin Air Force Base	Eglin AFB.
Nevada Complex	
Indian Springs Air Force Auxiliary Field or Nellis Air Force Base.	Nellis AFR, and Nevada Test Site.
New Mexico Complex	
Fort Bliss, Holloman Air Force Base, or White Sands Missile Range Headquarters.	Fort Bliss, Holloman AFB, and White Sands Missile Range.
South Central California Complex	
Edwards Air Force Base, or Fort Irwin National Training Center (NTC).	China Lake Naval Weapons Center, Edwards AFB Fort Irwin NTC, and Twenty-Nine Palms Marine Corps Air Ground Combat Center.
Washington Complex	
Yakima Firing Center (FC)	DOE Hanford Site, and Yakima FC.

b. Hard Mobile Launchers on Minuteman facilities.

Ellsworth Air Force Base, South Dakota
F E Warren Air Force Base, Wyoming
Grand Forks Air Force Base, North Dakota
Malmstrom Air Force Base, Montana
Minot Air Force Base, North Dakota
Whiteman Air Force Base, Missouri.

c. Hard Silos in a Patterned Array on or near Department of Defense installations.

Davis-Monthan Air Force Base, Arizona
Edwards Air Force Base, California
Fort Bliss, Texas
F E Warren Air Force Base, Wyoming
Gila Bend Air Force Auxiliary Field, Arizona
Yuma Proving Ground, Arizona.

For further information concerning the Legislative Environmental Impact Statement for the Small ICBM weapon system, contact: Lt Col Peter Walsh, AFRCE-BMS/DEV, Norton AFB CA 92409-6448, Telephone: (714) 382-4891.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-4663 Filed 3-3-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board Ad Hoc Committee to Review the Air Force Science and Technology Programs for Reliability, Maintainability and Logistics will conduct a closed meeting at the Pentagon, Washington, DC, on March 19-20, 1986, from 8:30 am to 5:00 pm.

The purpose of the meeting will be to review Air Force Reliability, Maintainability and Logistics technology programs and evaluate their completeness and innovativeness to achieve Air Force goals.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-4650 Filed 3-3-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Nuclear Waste Policy Act of 1982; Public Hearings on Crystalline Repository Project Draft Area Recommendation Report

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of public hearings on the Draft Area Recommendation Report.

SUMMARY: DOE has scheduled public hearings to receive oral and written comments from the public on the draft Area Recommendation Report (ARR), which identifies potential sites for consideration in the siting of a nuclear waste repository. This draft ARR was issued for public review and comment on January 16, 1986.

The draft ARR identifies 12 candidate areas, located in the States of Georgia, Maine, Minnesota, New Hampshire, North Carolina, Virginia, and Wisconsin, which DOE is proposing as potentially acceptable sites for area phase field studies. In addition, DOE has identified 8 candidate areas which may be designated as potentially acceptable sites during ARR finalization or the area phase, if necessary. These areas are located in Georgia, Minnesota, and Wisconsin.

The proposed potentially acceptable sites and candidate areas were selected from the 235 crystalline rock bodies which previously were identified by DOE in a series of Regional Characterization Reports which followed a national survey of crystalline rock. The 235 crystalline rock bodies are located in the following 17 States in the North Central, Northeastern, and Southeastern regions of the United States: North Central—Michigan, Minnesota, Wisconsin; Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont; Southeast—Georgia, Maryland, North Carolina, South Carolina, and Virginia.

FOR FURTHER INFORMATION CONTACT:

Dr. Sally A. Mann, Project Manager, Crystalline Repository Project Office, Chicago Operations Office, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439, Phone: (312) 972-2675

Ellison S. Burton, Director, Siting Division (RW-25), Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: (202) 252-1116

Robert Mussler, Esq., Deputy Assistant General Counsel for Environment, Office of General Counsel, U.S. Department of Energy, Washington, DC 20585, Phone: (202) 252-6947.

SUPPLEMENTARY INFORMATION:

I. Public Hearing Locations, Dates, and Times

Public hearings on the draft ARR are scheduled as follows:

AREA RECOMMENDATION REPORT HEARINGS

City and State	Address	Date	Time(s) (p.m.)
Ashland, WI	Ashland High School, 1900 Beaser Avenue, Ashland, WI 54801	3/17/86	5-10
White Lake, WI	White Lake High School, County Trunk M, White Lake, WI 54491	3/19/86	5-10
Morris, MN	Morris High School, 201 Columbia Avenue, Morris, MN 56267	3/24/86	5-10
Bedford, VA	Bedford Educational Ctr. Auditorium, 600 Edmund, Bedford, VA 24523	2/24/86	5-10
Loganville, GA	Loganville High School, Georgia Highway 81, Loganville, GA 30249	3/25/86	5-10
Sauk Centre, MN	Sauk Centre Jr. High, 9th and State, Sauk Centre, MN 56378	3/25/86	5-10
Portland, ME	City Hall Auditorium, 389 Congress Street, Portland, ME 04101	3/25/86	5-10
South Boston, VA	Halifax County Senior, High School, Highway 129, South Boston, VA 24592	3/26/86	5-10
Thomaston, GA	Thomaston Civic Center, Holston Drive, Thomaston, GA 30287	3/26/86	5-10
Winthrop, MN	City Hall, 2nd Floor, 305 N. Main Street, Winthrop, MN 55396	4/06/86	5-10
Lincoln, ME	Mattanewcook Academy, 15 Reed Drive, Lincoln, ME 04457	4/04/86	5-10
Waupaca, WI	Waupaca High School, 1149 Shoemaker Road, Waupaca, WI 54981	4/08/86	5-10
Keshena, WI	Menominee Indian, Senior High School, Highway 47, P.O. Box 50, Keshena, WI 54135	3/29/86	1-6
Albany, NY	Empire State Plaza, Convention Center, Albany, NY 12242	3/31/86	5-10
Mahnomen, MN	Mahnomen High School, Madison Avenue, Mahnomen, MN 56557	3/31/86	5-10
Indian Island, ME	Community Building, Penobscot Nation, 6 River Road Indian Island, ME 04468	4/1/86	5-10
Warren, MN	American Legion, 424 N. First Street, Warren, MN 56762	4/1/86	5-10
Henniker, NH	New England College Field House, Circle Street, Henniker, NH 03242	4/1/86	5-10
Raleigh, NC	Raleigh Civic Center, 500 Fayetteville Street, Raleigh, NC 27601	4/02/86	5-10
Eastport, ME	Shead High School, High Street, Eastport, ME 04631	4/03/86	5-10
Ada, MN	Ada High School, 105 Fourth St., E, Ada, MN 56510	4/03/86	5-10
Concord, NH	Concord City Auditorium, #1 Prince Street, Concord, NH 03301	4/3/86	5-10
Asheville, NC	Asheville Civic Center, Thomas Wolfe Auditorium, 87 Haywood Street, Asheville, NC 28801	4/4/86	5-10
Foley, MN	Foley Elementary School, Foley, MN 56329	4/7/86	5-10
Montpelier, VA	South Anna Elem. School, St. Route 673, Box 186, Montpelier, VA 23192	4/7/86	5-10
Bridgton, ME	Lake Region High School, Route 302, Bridgton, ME 04009	4/8/86	5-10
Boston, MA	Gardener Auditorium, Beacon and Boudin, State House, Boston, MA 02133	4/8/86	6-11
Providence, RI	State House, Room 313, Providence, RI 02903	4/10/86	5-10

AREA RECOMMENDATION REPORT HEARINGS—Continued

City and State	Address	Date	Time(s) (p.m.)
Ironwood, MI	Ironwood Theater, 109 E. Aurora, Ironwood, MI 49938	4/10/86	5–10
Trenton, NJ	State Museum Auditorium, 205 W. State Street, Trenton, NJ 08625–0530	4/10/86	5–10
Montpelier, VT	Pavilion Auditorium, 109 State Street, Montpelier, VT 05602	4/10/86	5–10
Hartford, CT	Parkview Hilton, 1 Hilton Plaza, Hartford, CT 06103	4/14/86	5–10
Annapolis, MD	Holiday Inn, 210 Holiday Ct., Annapolis, MD 21401	4/15/86	5–10

[1] Subject to change.

II. Presentation Procedure

Any person or representative of a group may submit a written request for an opportunity to make an oral presentation at a public hearing. Such requests must be received no later than ten days before the scheduled hearing. Requests should be sent to the Crystalline Repository Project Office at the address given above, identified as "ARR Hearing Request" on the outside of the envelope. Anyone making a request should provide a phone number at which he or she may be contacted throughout the day of the hearing. All written requests for opportunities to present comments shall be acknowledged by DOE.

In addition, persons may request an opportunity to make a presentation at a public hearing by calling the Crystalline Repository Project Office at the above telephone number. All telephone requests will be confirmed prior to the public hearing. Persons making a written request to speak at a public hearing will be provided an opportunity to make their presentation first or at the time agreed upon with DOE. Persons making requests by telephone will be scheduled to speak after those persons who made written requests.

At the hearing, those who have registered in advance will be heard first or at times reserved for them. Anyone present at the heaing who would like to speak but did not pre-register, may request an opportunity to speak. The moderator at the hearing will determine if such request can be accommodated within the time period scheduled.

Each person scheduled to appear at a specific hearing is requested to bring a written copy of his or her statement for submission to the hearing record.

III. Conduct of Hearings

DOE reserves the right to arrange the schedule of presentations to be heard and to establish additional procedures governing the conduct of the hearing. To ensure that as many interested persons as possible are given the opportunity to present oral comments, the length of each presentation will be limited to no more than 10 minutes, and may be further limited for a particular hearing depending upon the number of persons requesting to be head.

Questions may be asked only by those conducting each hearing, and there will be no cross-examination of persons presenting statements. Any further procedural rules needed for the proper conduct of the hearing will be announced by the moderator at the start of the hearing.

IV. Written Comments

DOE will consider both oral and written comments received on the draft ARR. The opportunity to provide written comments on the draft ARR is afforded by a public comment period which is scheduled to end on April 16, 1986. Written comments should be sent to: U.S. Department of Energy, ATTN: Comments-Draft ARR, Crystalline Repository Project Office, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439.

As noted above, written comments on the draft ARR may also be submitted at the public hearing.

V. Transcripts

A transcript will be made of each public hearing. Transcript copies will be made available for public inspection at the following locations, at the indicated times, Monday through Friday, except Federal holidays and where noted below:

1. DOE Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6020, 9:00 a.m. to 4:00 p.m.

2. Albuquerque Operations Office, Kirtland Air Force Base, National Atomic Museum Library, Public Reading Room, Albuquerque, New Mexico 87115, (505) 844–8443, 9:00 a.m. to 5:00 p.m.

3. Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (312) 972–2010, 8:00 a.m. to 5:00 p.m.

4. Idaho Operaions Office, 550 2nd Street, Headquarters 199, Idaho Falls, Idaho 83401, (208) 526–0271, 8:00 a.m. to 5:00 p.m.

5. Nevada Operations Office, Public Docket Room, 2753 S. Highland, Las Vegas, Nevada 89114, (702) 734–3521, 8:00 a.m. to 4:30 p.m.

6. Oak Ridge Operations Office, 200 Administration Road, Room G208, Federal Building, Oak Ridge, Tennessee 37830, (615) 576–1218, 8:00 a.m. to 4:30 p.m.

7. Richland Operations Office, Hanford Science Center-Rockwell Hanford Operations, 825 Jadwin Avenue, Federal Building, Richland, Washington 99352, (509) 376–8273, Sunday 1:00 p.m. to 5:00 p.m., Monday through Saturday 9:00 to 5:00 P.M.

8. San Francisco Operations Office, 1333 Broadway, Wells Fargo Building, Reading Room, Room 240, Oakland, California 94612, (415) 273–4358, 8:30 a.m. to 4:00 p.m.

9. Savannah River Operations Office, 211 York Street, N.E., Federal Building, Aiken, South Carolina 29801, (803) 725–3267, 8:30 a.m. to 4:00 p.m.

10. Boston Support Office, Analex Building, Room 1002, 150 Causeway Street, Boston, Massachusetts 02114, (617) 223–2525, 8:30 a.m. to 5:30 p.m.

11. New York Support Office, 26 Federal Plaza, Room 3200, New York New York 10278, (212) 264–1021, 8:00 a.m. to 5:30 p.m.

Any person may purchase a copy of the transcript of the hearing from the reporter, so identified by the moderator.

Issued in Washington DC, February 26, 1986.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Managment.

[FR Doc. 86–4638 Filed 3–3–86; 8:45 am]

BILLING CODE 6450–01–M

Receipt and Financial Settlement Provisions for Nuclear Research Reactor Fuels

Correction

In FR Doc. 86–3452 beginning on page 5754 in the issue of Tuesday, February 18, 1986, make the following correction:

On page 5755, in the middle column, in paragraph 6, subparagraph b was omitted. Paragraph 6 is corrected to read as follows:

6. DOE's commitment to provide fuel receipt and financial settlement services will terminate on the following dates:

a. For research reactor fuels described in 4.a. and 4.c.—December 31, 1987; and

b. For research reactor fuels described in 4.b.—December 31, 1992.

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

[Project No. 9195-000 et al.]

Hydroelectric Applications (City of Colorado Springs, CO, et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Major License (Over 5 NW).

b. Project No.: 9195-000.

c. Date Filed: May 17, 1985.

d. Applicant: City of Colorado Springs, Colorado.

e. Name of Project: Stanley Canyon Hydroelectric.

f. Location: Municipal Water System, City of Colorado Springs, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Don M. Schoen, Dept. of Utilities, P.O. Box 1103, Colorado Springs, CO 80947, (303) 636–5582.

Mr. David M. Lefebvre, Black & Veatch, P.O. Box 8405, Kansas City, MO 64114, (913) 967–2164.

i. Comment Date: April 16, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing 230-foot-high, 3,400-foot-long earthfilled Rampart Dam; impounding, (2) the 510-acre Rampart Reservoir with a gross storage capacity of 40,000 acre-feet at a normal maximum water surface elevation of 9,000 feet msl; (3) a 6-foot-diameter, 3-mile-long water supply conduit consisting of a 17,200-foot-long concrete lined tunnel, a high-pressure pipeline, and a closed flume; (4) a 35 feet by 60 feet by 130 feet concrete powerhouse located 2,000 feet north of the existing Pine Valley Purification Plant containing, initially, a single impulse turbine-generator unit with an installed capacity of 6.9 MW and producing an estimated average annual generation of 31.3 GWh and, ultimately, by 1996, 3 turbine-generator units with a total installed capacity of 19.3 MW and producing an estimated average annual generation of 60.5 GWh; (5) an underground concrete regulating reservoir with an initial storage capacity of 10 million gallons and with a 20-million gallon capacity by 1996; (6) an 8.4-mile-long, 34.5-kV buried transmission line interconnecting the project to the City of Colorado Springs, Cottonwood Substation; and (7) a 20-foot-wide access road to the powerhouse and another to a new pressure reducing station.

The proposed project would be constructed concurrently with the Applicant's expansion of its water distribution system which consists of a new water supply conduit, purification plant, and underground reservoirs and pipelines. The project would be located on City of Colorado Springs, Pike National Forest, and U.S. Air Force Academy lands in sections 28, 29, and 30, Township 12S, Range 67W and sections 25 and 26, Township 12S, Range 68W, Sixth Principal Meridian.

k. This notice also consists of the following standard paragraphs: A3, B, and C.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 9744–000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Madrid Hydropower Project.

f. Location: On the Grass River near Madrid, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Lawrence R. Taft, P.E., 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437–2547.

Mr. Neal F. Dunlevy, P.E., Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797–5800.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete and stone masonry dam approximately 400 feet long and 12 feet high; (2) an existing 100-acre reservoir with 880 acre-feet of storage at an elevation of 275 MSL (the use of 2-foot breakaway flashboards will be investigated); (3) a proposed power flume approximately 50 feet in length and width containing either one 750 kW bulb turbine-generator or two 375 kW bulb turbine-generators; (4) a proposed tailrace 50 feet wide, 10 feet deep, 100 feet long; (5) a proposed 4.16 kV transmission line approximately 200 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 3.8 GWh. The project energy would be sold to the Niagara Mohawk Power Company. The dam is owned by Town of Madrid, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $21,000.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 9772–000.

c. Date Filed: December 30, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Lower Stockport.

f. Location: On the Claverack Creek in Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalger Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934–4202.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 19-foot-high and 225-foot-long dam to be reconstructed; (2) a proposed 10-acre reservoir with a storage capacity of 95 acre-feet at elevation 26 feet msl; (3) a new intake structure; (4) a proposed powerhouse to contain one turbine/generator for an installed capacity of 365 kW; (5) a proposed tailrace; (6) a new 13.8–kV transmission line approximately 600 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 1.55 million kWh under a hydraulic head of 18 feet. The existing facilities are owned by Vincent Muessman and Pulcher and Sacco, Inc.

k. Purpose of Project: Project power will be be sold to the Niagara Mohawk Power Corporation.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the

preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $54,000.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9736–000.

c. Date Filed: December 27, 1985.

d. Applicant: James David Young, *et al.*

e. Name of Project: Young.

f. Location: On Little Thompson River, near Longmont, in Boulder County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. James D. Young, 3025 Colgate Drive, Longmont, CO 80501, (303) 772–2159

Christopher R. Herman, Esq., Calkins, Kramer, Grimshaw & Harring, 1700 Lincoln, Suite 3800, Denver, CO 80203, (303) 839–3716.

i. Comment Date: April 18, 1986.

j. Deseciption of Project: The proposed project would consist of: (1) The existing W.R. Blower No. 1 diversion structure and ditch; (2) a 15-inch-diameter, 3,960-foot-long PVC pipeline/penstock; (3) a concrete powerhouse containing a single 20 kW centrifugal; pump turbine-generator unit producing an estimated average annual generation of 175,000 kWh; (4) a 15-inch-diameter, 130-foot-long PVC pipe tailrace; and (5) a 100-foot-long tap line interconnecting the project to an existing 12.47 kV Poudre Valley REA line. The project would be located entirely on private lands in section 6, T3N, R69W, 6th P.M. Applicant intends to sell project power to either Poudre Valley REA, Public Service Company of Colorado, or the City of Longmont, Colorado.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $12,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 9788–000.

c. Date Filed: December 30, 1985.

d. Applicant: Grand River Power Company.

e. Name of Project: Grand River.

f. Location: On the Colorado River, near Rifle, in Garfield County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Scott Balcomb, Esq., Delaney & Balcomb, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602, (303) 945–6546.

i. Comment Date: April 13, 1986.

j. Description of Project: The proposed project would consist of: (1) A 42-foot-high, 300-foot-long concrete gravity dam across the Colorado River; impounding, (2) a 470 acre reservoir with a storage area of 7,800 acre-feet at normal maximum water surface elevation of 5,215 feet msl; (3) a 125 feet by 32 feet concrete powerhouse, integrated with the dam structure, containing a single 8.1 MW Kaplan turbine-generator unit and producing an estimated average annual generation of 53 GWh; and (4) a 6,500-foot-long transmission line interconnecting the project to an existing 230 kV Public Service Company of Colorado (PSCC) line. Applicant intends to sell project power to PSCC or the Glenwood Springs Electric System. The project would be located in SW ¼, NE ¼ of Section 27, NW ¼ , NE ¼ of Section 27, and in Sections 33 and 34, T65, R94W, 6th P.M.

K. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 9614–000.

c. Date Filed: November 6, 1985.

d. Applicant: Andrew F. Rose.

e. Name of Project: Laramie-Poudre.

f. Location: On the Laramie River and Cache La Poudre River, near Fort Collins, in Larimer County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Andrew F. Rose, P.O. Box 325, Greeley, CO 80632, (303) 330–9024

Mr. James M. Rose, 726 Laporte Avenue, Fort Collins, CO 80501.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-diameter, 1,250-foot-long steel penstock anchored to bedrock near the mouth of the existing Laramie-Poudre Tunnel; (2) a powerhouse located adjacent to State Highway 14, containing two Francis turbine-generator units with a total installed capacity of 1,500 kW, operating under a head of 500 feet, and producing an estimated average annual generation of 6.5 GWh; (3) a tailrace returning water to an existing drainage channel thence to Cache La Poudre River; (4) a 12-mile-long, 7.2-kV transmission line interconnecting the project at the Rustic Substation to an existing Poudre Valley Rural Electric Association, Inc. line. The project would be entirely located on Roosevelt National Forest lands and easements. Portions of the Cache La Poudre River have been designated for study for inclusion in the National Wild and Scenic Rivers System. Project power would be sold to a public utility or irrigation district.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $30,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 9810–000.

c. Date Filed: December 30, 1985.

d. Applicant: Clifton Corporation.

e. Name of Project: New Savannah Bluff Hydro Project.

f. Location: On the Savannah River in Richmond County, Georgia and Aiken County, South Carolina.

g. Filed Purusant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles B. Mierek, Route 2, Box 302A, One Clifton—Glendale Road, Spartanburg, SC 29302, 803–579–4405.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed run-of-river project would be located at the U.S. Army Corps of Engineers' New Savannah Bluff Lock and Dam, and woud consist of: (1) A proposed headrace canal beginning approximately 500 feet upstream of the lock and dam; (2) a new powerhouse containing one 7.2-MW generator; (3) a new tailrace approximately 750 feet long; (4) two proposed transmission lines, one located on the South Carolina side of the river consisting of a 4-mile-long 46-kV line, and one located on the Georgia side of the river consisting of a 4-mile-long 13.8-kV line; and (5) appurtenant facilities. The Applicant estimates that the average annual generation would be 45,290 MWh. Project energy would be sold to Georgia Power Company and South Carolina Electric and Light Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $75,000.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9790–000.

c. Date Filed: December 30, 1985.

d. Applicant: Edward Navikis.

e. Name of Project: Wildwood Power Project.

f. Location: On Deer Creek near the town of Grass Valley in Nevada County, California (Section 20, T16N, R7E, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Edward Navikis, P.O. Box 1578, Grass Valley, CA 95945, (916) 432–2560.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed project would consist of: (1) The Wildwood Associates' existing 60-foot-high Anthony Dam; (2) The Wildwood Associates' existing 2,400 acre-foot-capacity Lake Wildwood; (3) a 48-inch-diameter, 1,140-foot-long penstock to be connected to the existing outlet of the dam; (4) a powerhouse to contain a single generating unit with a rated capacity of 650 kW operating under a head of 54 feet; and (5) a 300-foot-long, 21-kV transmission line to connect the project with an existing Pacific Gas and Electric Company (PG&E) line north of the powerhouse.

k. Purpose of Project: The project's estimated annual generation of 1.0 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: Amendment to License.

b. Project No.: 2075–002.

c. Date Filed: January 27, 1986.

d. Applicant: The Washington Water Power Company.

e. Name of Project: Noxon Rapids.

f. Location: On the Clark Fork River in Sanders County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Edward J. Leary, The Washington Water Power Co., E. 1411 Mission Avenue, Spokane, WA 99220, (509) 489–0500.

i. Comment Date: April 7, 1986.

j. Description of Project: Applicant proposes to delete from the license two 230-kV transmission lines. One line extend approximately 19 miles from the Noxon Rapids plant to Applicant's Cabinet Gorge Plant and the other extends approximately 43 miles from the Noxon Rapids plant to Applicant's Pine Creek Substation. In addition, the terminal facilities at the Pine Creek Substation and all those electrical facilities in the switchyard except for the 230-kV switching equipment associated with the generating plant would also be deleted from the license. The two transmission lines are no longer considered to be primary lines for transmission of power from the Noxon Rapids powerhouse to the point of junction with the distribution system or with the interconnected primary transmission system. Applicant states that it will acquire easements from the Forest Service for the occupancy of Forest Service lands crossed by the transmission lines.

k. This notice also consists of the following standard paragraphs: B & C.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9707–000.

c. Date Filed: December 23, 1985.

d. Applicant: Mr. Franklin Springer.

e. Name of Project: Springer Hydro Development No. 1.

f. Location: On McFadden, Morrison, and Pine Creeks, tributaries of the Arkansas River, near Buena Vista and Riverside, in Chaffee County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Franklin Springer, Route 1, Box 380, Buena Vista, CO 81211, (303) 395–2364

Mr. Karl F. Kumli III, Attorney at Law, P.O. Box 2279, Boulder, CO 80306, (303) 440–0075.

i. Comment Date: April 17, 1986.

j. Description of Project: The existing run-of-the-river project consist of: (1) A 7-foot-high, 40-foot-long dyke structure across Morrison Creek at elevation 8,665 feet msl; (2) a 6-foot-high, 200-foot-long earthfilled dam structure across a draw located adjacent to McFadden Creek at elevation 8,678 feet msl and impounding the 2.2 acre Waupaca Reservoir No. 2; (3) the 10-inch-diameter, 412-foot-long McFadden Pipeline; (4) the 10-inch-diameter, 1,100-foot-long Morrison Pipeline; (5) a 10-inch-diameter, 1,100-foot-long steel penstock; (6) a 8-foot-high, 20-foot-long, 10-foot-wide concrete powerhouse containing a single Pelton turbine-generator unit with an installed capacity of 45 kW, operating under a head of 196 feet and a hydraulic capacity of 6 cfs, and producing an estimated average annual generation of 103,680 kWh; (7) a 24-inch-diameter, 130-foot-long tailrace discharging water to Morrison Creek; and (8) a 250-foot-long, 480-volt transmission line interconnecting the project to an existing 250-kV Sangre de Cristo Electric Association, Inc. line. Project power is sold to the Colorado-Ute Electric Association, Inc. The project is located entirely on Applicant lands in Section 34, T125, R79W, 6th PM, Harvard Lakes Quadrangle.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $5,000.

k. This notice also consists of the following standard paragraphs: A5, A7,A9, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9791–000.

c. Date Filed: December 30, 1985.

d. Applicant: Edward Navikis.

e. Name of Project: Lower Deer Creek Power Project.

f. Location: On Deer Creek near the town of Grass Valley in Nevada County, California (Sections 22, 23 and 26, T16N, R6E, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Edward Navikis, P.O. Box 1578, Grass Valley, CA 95945, (915) 432–2560.

i. Comment Date: April 16, 1986.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high diversion dam at elevation 600 feet; (2) a 60-inch-diameter, 175-foot-long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 800 kW operating under a head of 53 feet; and (4) a 12-kV, 2,000-foot-long transmission line to connect the project with an existing Pacific Gas and Electric Company (PG&E) line south of the powerhouse.

k. Purpose of Project: The project's estimated annual generation of 1.3 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraph: A5, A7, A9, B, C and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9834–000.

c. Date Filed: December 31, 1985.

d. Applicant: Gray Creek Hydro Company.

e. Name of Project: Gray Creek Project.

f. Location: On Gray Creek, near the town of Floriston, in Nevada County, California (Sections 6, and 36, T17N, R18E, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Jess Bailey, P.O. Box 48, Floriston, CA 96111, (916) 587–7389

Mr. Timothy Berg, 2710 Harding Way, Reno, NV 89503.

i. Comment Date: April 16, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high diversion dam at approximate elevation of 5600 feet; (2) 4,000-foot-long channel; (3) a 36-inch-diameter, 350-foot-long penstock; (4) a powerhouse to contain generating units with combined rated capacity of 780 kW operating under a head of 310 feet; and (5) a 0.1-mile-long, 60-k/v transmission line to connect the powerhouse with an existing Sierra Pacific Power Company (SPP) line north of the project.

k. Purpose of Profect: The project's estimated annual generation of 3.075 million kWh will be sold to SPP.

l. This notice also consists of the following standard paragraph: A5, A7, A9, B, C and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9792–000.

c. Date Filed: December 30, 1985.

d. Applicant: Edward Navikis.

e. Name of Project: Wolf Creek Power Project.

f. Location: On Nevada Irrigation District's D–S Canal near the town of Grass Valley in Nevada County, California (Sections 24, 25, 29 and 30, R8E, T16N, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Edward Navikis, P.O. Box 1578, Grass Valley, CA 95945, (916) 432–2560.

i. Comment Date: April 16, 1986.

j. Description of Project: The proposed project would consist of: (1) An intake structure within the south bank of the D–S Canal; (2) a 36-inch-diameter, 2,000-foot-long penstock; (3) a power house to contain a single generating unit with a rated capacity of 825 kW operating under a head of 220 feet and discharging into Wolf Creek; and (4) a 2,000 to 4,000-foot-long, 12-kV transmission line will connect the powerhouse with an existing Pacific Gas and Electric Company (PG&E) line southwest of the project.

k. Purpose of Project: The project's estimated annual generation of 2.9 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 9618–000.

c. Date Filed: November 12, 1985.

d. Applicant: Mr. Bill Harris.

e. Name of Project: Robinson Springs.

f. Location: On Robinson Springs and Mau Spring Creek, near Eureka, within lands administered by the Bureau of Land Management, in White Pine County, Nevada (In Sections 4, 5, and 8 of T20N, R55E and Sections 31, 32, 33, , and 34 of T21N, R55E, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bill Harris, HCR 30 Box 29, Chiloquin, OR 97624, (503) 783–2134.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed project would consist of: (1) A 1,000-foot-long collection ditch (Robinson Springs) at elevation 6,880 feet msl; (2) a 4-foot-high, 10-foot-long diversion structure (Robinson Springs) at elevation 6,880 feet msl; (3) a 4-foot-high, 10-foot-long diversion structure (Mau Creek) at elevation 6,960 feet msl; (4) an 8-inch-diameter, 4,290-foot-long steel pipe (Robinson Springs); (5) a 6-inch-diameter, 7,950-foot-long steel pipe (Mau Creek); (6) a 10-inch-diameter, 4,950-foot-long steel penstock; (7) a powerhouse containing a single turbime-generator unit with a rated capacity of 300 kW and operating under a head of 917 feet; (8) a 12-inch-diameter, 1,600-foot-long plastic water return line; and (9) a 34-kV, 50-foot-long transmission line interconnecting the project to an existing Mt. Wheeler Power Company line. The project's estimated average annual generation of 1.5 GWh would be sold to Mt. Wheeler Power Company.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $7,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9746–000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Masena Grass Hydropower Project.

f. Location: On the Grass River near Masssena, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Lawrence R. Taft P.E., 10315 Caughdenoy Rd., Central Square, NY 13036

Mr. Neal F. Dunlevy P.E., Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13502.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed would consist of: (1) An existing concrete and stone masonry dam approximately 380 feet long and 10 feet high; (2) an existing 200-acre reservoir with 1,000 acre-feet of storage at an elevation of 172 MSL (the use of breakaway wooden flashboards will be investigated); (3) a proposed concrete intake structure with trash racks and gate approximately 30 feet wide; (4) a proposed canal 35 feet wide, 10 feet deep, and 300 feet long; (5) a proposed power flume 50 feet wide and long, and 15 feet high containing two 450–kW submerged bulb turbine-generators; (6) a proposed tailrace channel 35 feet wide, 10 feet deep, and 300 feet long; (7) a proposed 4.8 kV transmission line 500 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 4.5 GWh. The project energy would be sold to the Niagara Mohawk Power Company. The dam is owned by Philip and Bonnie Milliga, Massena, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on result of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the

work to be performed under the preliminary permit would be $21,000.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9741-000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: East Sidney Hydro Project.

f. Location: On Ouleout Creek near East Sidney, Delaware County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person:

Mr. Lawrence R. Taft P.E., 10315 Caughdenoy Rd, Central Square, NY 13036, (315) 437-2547

Mr. Neal F. Dunlevy P.E., Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797-5800.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed would utilize the Corps of Engineers' East Sidney Flood Control Dam and reservoir, and would consist of: (1) A proposed 6 foot diameter penstock approximately 400 feet long; (2) a proposed powerhouse approximately 20 feet by 20 feet housing a 750-kW generator; (3) a proposed tailrace 8 feet wide, 7 feet deep, and 50 feet long; (4) a proposed 13.2 kV transmission line approximately 1,000 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual generation would be 3.4 GWh. The project energy would be sold to New York State Electric and Gas Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize constuction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminay permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $25,000.

17 a. Type of Application: Major License under 5MW.

b. Project No.: 7045-001.

c. Date Filed: April 30, 1984.

d. Applicant: Mainstream Hydro Corporation.

e. Name of Project: Sullivan Dam Project.

f. Location: On the Sugar River in the Town of Clarement, Sullivan County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Roger W. Lamson, P.O. Box 414, North Hartland, VT 05052, (802) 295-3316.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing 110-foot-long, 8-foot-high concrete gravity Broad Street Dam; (2) an impoundment having a surface area of 2 acres, a storage capacity of 8 acre-feet, and a normal water surface elevation of 525.5 feet msl; (3) a proposed intake structure; (4) a proposed 800-foot-diameter steel penstock; (5) a proposed powerhouse containing 3 generating units having a total installed capacity of 1890 kW; (6) a proposed 60-foot-long tailrace; (6) a proposed 100-foot-long 2.40-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 7,300,000 MWh. The existing dam is owned by the City of Clarement, New Hampshire.

k. Purpose of Project: All project energy generated would be sold to the Connecticut Valley Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

18 a. Type of Application: New License (over 5 MW).

b. Project No.: 6032-000 (previously licensed as Project No. 2500).

c. Date Filed: January 23, 1982.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Mechanicville Project.

f. Location: On the Hudson River, in the Town of Mechanicville, Rensselaer and Saratoga Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: John H. Terry, Senior Vice President, General Counsel, and Secretary, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428-5582.

i. Comment Date: April 17, 1986.

j. Description of Project: The existing project consists of the following:

(1) The western dam portion 795 feet in length consisting of an earth fill with concrete core section 700 feet long and 15 feet high and a gravity concrete section 95 feet long and 26 feet high; (2) a 290-acre reservoir at elevation 47 feet; (3) an open flume and concrete intake structure consisting of six separate passages 23 feet wide, 10 feet high, and 37 feet long equipped with steel racks and slots for use of stop logs; (4) a concrete, brick, and steel powerhouse equipped with six horizontal generating units having a total capacity of 4,500 kW; and (5) appurtenant electrical and mechanical facilities.

The redeveloped project would consist of:

(1) An existing dam in sections: a 200-foot-long, 15-foot-high earth fill with a concrete core western section consisting of a non-overflow wall and sluiceway, a 1,000-foot-long, 22-foot-high concrete gravity eastern section; (2) installation of 1-foot-high flashboards; (3) a reservoir having a surface area of 275 acres, a storage capacity of 1,150 acre-feet, and a normal water surface elevation of 48 feet USGS; (4) a proposed 140-foot-long, 20-foot-wide intake structure; (5) a proposed powerhouse replacing the existing powerhouse containing 5 generating units with an installed capacity 12,000 kW; (6) a proposed tailrace; (7) a proposed 150-foot-long, 34.5-kV transmission line; and (8) appurtenant facilities. The Applicant estimates the average generation would be 58,000,000 kWh.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the license expiration of May 18, 1984, the Applicant's estimated net investment in the project would amount to $2,350,000, and the estimated severance damages would amount to $28,750,000.

k. Purpose of Project: All project energy generated would be utilized by the Applicant for sale to its customers.

l. This notice also consists of the following standard paragraphs: B and C.

19 a. Type of Application: Preliminary Permit.

b. Project No.521-000.

c. Date Filed: October 3, 1985.

d. Applicant: Lloyd Ladd.

e. Name of Project: Ladd Dam.

f. Location: China Lake Outlet Stream, Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-824(r).

h. Contact Person: Mr. Lloyd, Snow Pond Road, Oakland, ME 04963, (207) 465-7815.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam 10 feet high and 70 feet long; (2) an existing impoundment with normal maximum surface elevation of 158 feet mean sea level, volume of 260 acre-feet, and surface area of 38 acres; (3) a proposed submersible turbine/generator of 100 kW capacity to be installed at the existing deep gate location; (4) a proposed 25-foot-long excavated tailrace channel; (5) a proposed 200-foot-long, 480 volt

transmission line, and (6) appurtenant facilities.

The estimated annual energy production of the project is 400,000 kWh. The estimated net hydraulic head is 12 feet. Project power would be sold to Central Maine Power Company. The owner of the dam is Lloyd Ladd.

k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $19,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No. 9559–000.

c. Date Filed: October 25, 1985.

d. Applicant: River Street Associates.

e. Name of Project: Gurnsey Dam.

f. Location: On the Nubanusit River in Hillsboro County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Kenneth L. King, River Street, Peterborough, NH 03458, (603) 924–9980.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing masonry and concrete gravity dam 16 feet high and 104 feet long with a crest elevation of 746 feet mean sea level; (2) an existing impoundment 7,000 square feet in area and with no storage capacity at a normal maximum surface elevation of 746 feet mean sea level; (3) a proposed concrete intake and proposed 54-inch-diameter, 20-foot-long steel penstock; (4) a proposed 20-foot-long, 12-foot-wide concrete powerhouse enclosing a proposed 75 kW capacity turbine/generator; (5) a proposed 480 volt, 375-foot-long transmission line; and (6) appurtenant facilities. The estimated annual energy production is 300,000 kWh. The hydraulic head is approximately 16.5 feet. Project power would be sold to the Public Service Company of New Hampshire The dam is owned by Brickmill Associates.

k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $8,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 9602–000.

c. Date Filed: November 1, 1985.

d. Applicant: Como Lake, Inc.

e. Name of Project: Como Lake.

f. Location: On Rock Creek, a tributary to the Bitterroot River, in the Bitterroot National Forest in Section 29, 28 and 32, T.4N., R.21W. near the town of Hamilton in Ravalli County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Rita Weaver, P.O. Box 604, Cooding, ID 83330, (208) 934–8401.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high diversion dam at elevation 4,194 feet; (2) a 4,200-foot-long, 10-foot-diameter penstock; (3) a powerhouse containing three generating units with a total rated capacity of 3,634 kW; and (4) an 11,000-foot-long transmission line. Applicant estimates the average annual energy production to be 13,606,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $150,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to Montana Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 9550–000.

c. Dated Filed: October 22, 1985.

d. Applicant: Lower Patterson, Inc.

e. Name of Project: Lower Patterson Creek.

f. Location: On land managed by the Bureau of Land Management, on Patterson Creek, in Lemhi, County, Idaho. Township 14N, Range 23E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Rita Weaver, P.O. Box 64, Gooding, ID 83330, (208) 934–8401.

i. Comment Date: April 7, 1986.

j. Competing Application: Project No. 9587, Dated Filed: 11/01/85. Due Date: 04/07/85.

k. Description of Project: The proposed project would consist of: (1) A 3-foot-high diversion dam at elevation 6,240 feet; (2) a 5,400-foot-long, 54-inch-diameter penstock; (3) a powerhouse containing three generating units with a combined capacity of 1,350 kW and an average generation of 5, 913 MWh; and (4) a 600-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $20,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

23 a. Type of Application: Amendment of License.

b. Project No.: 2305–006.

c. Dated Filed: May 9, 1985 and supplemented on October 9, 1985.

d. Applicant: Sabine River Authority of Texas and Sabine River Authority, State of Louisiana.

e. Name of Project: Toledo Bend Dam Project.

f. Location: On the Sabine River in Newton County, Texas and Sabine Parish, Louisiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Sam Collins, General Manager, Sabine River Authority to Texas, P.O. Box 579, Orange, TX 77631, 409–883–9334.

i. Comment Date: April 7, 1986.

j. Description of Project: The Toledo Bend Dam Project No. 2305 as licensed would consist of: (1) A rolled earth-filled dam with maximum height of 112 feet and length of 11,250 feet; (2) a reservoir covering an area of 181,600 acres with a controlled storage capacity of 4,477,000 acre-feet; (3) a spillway comprised of a concrete, gravity-type, gated weir with a concrete chute and stilling basin, and a discharge channel in the left abutment; (4) a sluiceway; (5) a powerhouse located in the right abutment containing

two 46-MW generators for a total rated capacity of 92 MW; (6) a tailrace channel; (7) step-up transformers; (8) a switchyard; and (9) appurtenant electrical and mechanical facilities. The annual average generation of the project is 207,000 MWh.

The Applicants propose to amend its license by: (1) Increasing the total installed capacity by 810 kW with the installation of a portable generator to be located inside the sluiceway of the Toledo Bend Dam spillway; and (2) increasing the estimated annual generation by 6,026 MWh. The Applicants state that the new facilities would be in the same general project area, and no adverse impacts would be expected other than those addressed in the original licensing process. The project would be operated as already licensed with no other changes.

k. Purpose of Project: Project energy would be sold ot either Gulf State Utilities or Central Louisiana Electric Company.

l. This notice also consists of the following standard paragraphs: B, C and D1.

24 a. Type of Application: Conduit Exemption.

b. Project No.: 9699–000

c. Dated Filed: December 20, 1985.

d. Applicant: Albany Hydro Associates.

e. Name of Project: Albany Hydro Development Project.

f. Location: At the Water Tranmission Main at the Albany Water Filtration Plant, Town of Bethlehem, Albany County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Timothy D. Butler, Albany Hydro Associates, 7 Hemlock Street, Latham, New York 12110, (518) 785–5546.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would utilize the existing Albany Water Transmission Main and would consist of the following: (1) A proposed underground powerhouse which will contain a 130-kW generating unit; and (2) appurtenant facilities. The Applicant estimates a 900 MWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

25 a. Type of Application: Conduit Exemption.

b. Project No.: 8344–001.

c. Date Filed: June 7, 1984.

d. Applicant: Pacific Malibu Develpment Corporation.

e. Name of Project: Las Vegas Wash Hydro Project.

f. Location: Las Vegas Wash in Clark County, Nevada. NE¼ of SW¼ of SW¼ of Section 14, Township 21 South, Range 63 East, Mount Diablo Baseline and Meridian. Also the S½ of SE¼ of NW¼ of SW¼ of said Section 14.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Mr. Barry Silverton, Chief Executive Officer, Pacific Malibu Development Cooporation, 12021 Wilshire Boulevard, Suite 1900, Los Angeles, CA 90025.

i. Comment Date: April 7, 1986.

j. Competing Application: Project No. 9634–000, Date Filed: November 20, 1985.

k. Description of Project: The proposed project would be located on lands owned by the Applicant, would utilize flows from 3 local wastewater treatment plants through a pipeline 84 inches in diameter and 10,700 feet long, and would consist of: (1) A powerhouse with an installed capacity of 2,780 kW; (2) a tailrace returning flow to the Wash; and (3) apputenant facilities. The Applicant estimates that the average annual energy output would be 11,800,000 kWh.

l. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3b.

26 a. Type of Application: 5 MW Exemption.

b. Project No.: 9548–000.

c. Date Filed: October 18, 1985.

d. Applicant: Rhyne Mills, Inc.

e. Name of Project: Rhyne Mills No. 1.

f. Location: South Fork Catawba River, Lincoln County, North Carolina.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. Paul C. Rhyne Jr., President, Rhyne Mills, Inc., P.O. Box 70, Lincolnton, NC 28092, (704) 735–7456.

i. Comment Date: April 7, 1986.

j. Competing Application: Project No. 8469, Date July 30, 1984.

k. Description of Project: The project would consist of: (1) An existing concrete and rock dam structure, approximately 153 feet long and 13 feet high, (2) an existing reservoir with a surface area of 11 acres and a gross storage capacity of 75 acre-feet at the normal maximum water surface elevation of 727 feet (m.s.l.); (3) an existing powerhouse located at the left dam abutment, in which two new generating units with a total capacity of 710 kW would be installed, (4) an existing tailrace, aproximately 150 feet long and 35 feet wide; (5) a proposed short transmission line section to interconnect with an existing substation adjacent to the project and (6) appurtenant facilities. The estimated average annual generation of 3.4 GWh would be used in the Applicant's textile mill operation, with excess power sold to Duke Power Company.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take over or develop the project.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D3a.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 day after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice,

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent

allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular applications.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATIONS", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file wihin 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no

comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 27, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4616 Filed 3-3-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50649; FRL-2968-8]

Issuance of Experimental Use Permits; Abbott Laboratories et al.

Correction

In FR Doc. 86-3048 beginning on page 5249 in the issue of Wednesday, February 12, 1986, make the following correction: On page 5249, in the second column, in the eighth line of the second complete paragraph, "amion" should read "amino".

BILLING CODE 1505-01-M

[OPP-00219; FRL-2968-7]

Pesticide Registration Standards; Notice of Registration Standards Issued in FY85 and Registration Standards Scheduled for FY86

Correction

In FR Doc. 86-3049 beginning on page 5245 in the issue of Wednesday, February 12, 1986, make the following corrections: On page 5246, in the second column, in the first complete paragraph, in the second line, "Registrating" should read "Registration"; in the table, in entry 7, in the second column, "56-48-2" should read "56-38-2".

BILLING CODE 1505-01-M

[OPP-180687; FRL-2969-1]

Pesticides; Emergency Exemptions for Sethoxydim, etc.

Correction

In FR Doc. 86-3046 beginning on page 5247 in the issue of Wednesday, February 12, 1986, make the following corrections:

1. On page 5248, in the third column, in paragraph 22, "acetate" should be inserted after the word "Ethyl".

2. On the same page, in the same column, in the first line of paragraph 23, "Trifluralin" was misspelled.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1570]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

February 26, 1986.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network; Notice of Inquiry into Standards for Inclusion of One and Two-Line Business and Residential Premises Wiring and Party Line Service in Part 68 of the Commission's Rules. (CC Docket No. 81-216, RM's 2845, 2930, 3195, 3206, 3227, 3283, 3316, 3329, 3348, 3501, 3526, 3530, & 4054).

Petition to Amend Part 68 of the Commission's Rules to Permit Registration of Terminal Equipment for Connection to Voiceband Private Line Channels that Utilize Loop Start, Ringdown or Inband Signaling and Voiceband Metallic Private Line Channels. (CC Docket No. 84-490, RM-4458).

Filed By: Marilyn J. Gottlieb Wasser, Attorney for American Telephone and Telegraph Company on 2-10-86.

Subject: Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers. (CC Docket No. 84-800, Phase II).

Filed By: Richard C. Schramm, Daniel J. Whelan & David K. Hall, Attorneys for The Bell Atlantic Telephone Companies of 2-10-86.

Saul Fisher, Campbell L. Syling & Bruce P. Beausejour, Attorneys for New York Telephone Company and New England Telephone and Telegraph Company on 2-10-86.

Thomas J. Reiman, Alfred Winchell Whittaker, Joyce L. Bernstein S. Harry J. Kelly, Attorneys for Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company & Wisconsin Bell, Inc., on 2-14-86.

Jack E. Herington & Sherry F. Bellamy, Attorneys for United States Telephone Association on 2-14-86.

Filed By: Stephen A. Wuttke, Attorney for Central Telephone Company on 2-14-86.

Daniel L. Bart & Richard McKenna, Attorneys for GTE Service Corporation and its affiliated domestic telephone operating companies on 2-14-86.

Ronald T. LeMay, Vice President-General Counsel & Carolyn C. Hill, Attorney for United Telephone System, Inc., on 2-14-86.

Terry O. Oulundsen, Vice President-Regulatory Matters for The Southern New England Telephone Company on 2-14-86.

Josephine S. Trubek, Attorney for Rochester Telephone Corporation on 2-14-86.

Dana A. Rasmussen & Robert B. McKenna, Attorneys for The Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company & Pacific Northwest Bell Telephone Company on 2-18-86.

Robert L. Barada, Susan E. Barisone & Stanley J. Moore, Attorneys for Pacific Bell & Nevada Bell on 2-18-86.

Steven A. Millstein, Division Manager-Southwestern Bell Corporation Earnings Requirements & William C. Sullivan, Linda S. Legg, Paul G. Lane & Hope E. Thurrott, Attorneys for Southwestern Bell Telephone Company on 2-18-86.

Vincent L. Sgrosso, M. Robert Sutherland & G. Thomas Abernathy, Jr., Attorneys for BellSouth Corporation on behalf of South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company on 2-18-86.

Francine J. Berry, W. Preston Granbert, Richard J. Rawson & Jules M. Perlberg, Attorneys for American Telephone and Telegraph Company on 2-18-86.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-4609 Filed 3-3-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-470]

First Federal Savings of Arkansas, F.A. Little Rock, AR; Final Action Approval of Conversion Application

Dated: February 26, 1986

Notice is hereby given that on February 12, 1986, the Office of General Counsel of the Federal Home Loan Bank

Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings of Arkansas, F.A., Little Rock, Arkansas for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, 500 E John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261-9026.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-4608 Filed 3-3-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

I.B. Russell Co. Laboratories; Sodium Arsanilate (Arsanilic Acid) Tablets; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by I.D. Russell Co. Laboratories providing for the use of sodium arsanilate (arsanilic acid) tablets in poultry drinking water for increased rate of weight gain, improved feed efficiency, improved pigmentation, and prevention of coccidiosis. The firm requested the withdrawal of approval.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: I.D. Russell Co. Laboratories, Box 1, Kansas City, MO 64141, informed FDA, by letter dated November 14, 1985, that the firm voluntarily requests withdrawal of approval of NADA 6-860 and waives an opportunity for hearing. The NADA provides for use of Zuco sodium arsanilate (arsanilic acid) tablets in poultry drinking water for increased rate of weight gain, improved feed efficiency, imporved pigmentation, and prevention of coccidiosis.

Therefore, under the Federal Food, Drug, and Cosmetic Acit (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 6-860 and all supplements thereto for sodium arsanilate (arsanilic acid) tablets is hereby withdrawn, effective March 14, 1986.

Dated: February 20, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-4605 Filed 3-3-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85E-0582]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tambocor

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Tambocor and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael W. Cogan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Tambocor, whose sole active ingredient is flecainide acetate. Tambocor is an antiarrhythmic drug for treatment of life-threatening ventricular arrythmias, such as sustained ventricular tachycardia. Based on this approval, Alcon Laboratories, Inc., now seeks patent term restoration.

FDA has determined that the applicable regulatory review period for Tambocor is 3,449 days. Of this time, 2,403 days occurred during the testing phase of the regulatory review period, while 1,046 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act become effective:* May 24, 1976. FDA has verified that, as claimed by the applicant, the investigational new drug application became effective on May 24, 1976 (30 days after its receipt by the agency; see 21 CFR 312.1(b)(4)).

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 21, 1982. FDA has verified that the new drug application (NDA 18-830) was initially submitted on the date claimed by the applicant, December 21, 1982.

3. *The date the application was approved:* October 31, 1985. FDA has verified that NDA 18-830 was approved on October 31, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and

Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 5, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 2, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp., 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 26, 1986.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 86–4602 Filed 3–3–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N–86–1594; FR–2202]

Application Submission Dates for HUD-Administered Small Cities Program

AGENCY: Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises prospective applicants of the dates for submission of applications to the HUD offices for the HUD-administered Small Cities Program in Maryland and New York under the Community Development Block Grant Program for Fiscal Year 1986.

FOR FURTHER INFORMATION CONTACT: Patricia G. Myers, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–6322. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 570.420(h)(3), the Department of Housing and Urban Development (HUD) has established dates for submission of applications for Small Cities grants in the States of Maryland and New York for Fiscal Year 1986. Applications for funding under the Single Purpose and Comprehensive Grant provisions of the HUD-administered Small Cities Program will be accepted only during the designated time period. Applications received in the HUD Offices after the deadline must be postmarked no later than the applicable deadline submission date. Any applications postmarked after that date are unacceptable and will be returned.

Applications for Single Purpose grants under 24 CFR 570.430, or applications for Comprehensive grants under 24 CFR 570.426, are required to be submitted to the applicable HUD Office in accordance with the following schedule:

State	No earlier than—	No later than—
Maryland	Apr. 14, 1986	Apr. 28, 1986.
New York	Feb. 24, 1986	Mar. 10, 1986.

Applicants in Maryland should submit their applications to the Baltimore Field Office. Applicants in New York in the Counties of Sullivan, Ulster and Putnam and nonparticipating jurisdictions in the Urban Counties of Dutchess, Orange, Rockland, Westchester, Nassau and Suffolk Counties should submit applications to the New York Regional Office. All other nonentitled communities in the State of New York should submit their applications to the Buffalo Field Office.

The Application requirements related to this program have been approved by the Office of Management and Budget (OMB) and assigned approved number 2506–0060.

This action is exempt from the provisions of the National Environmental Policy Act under 24 CFR 50.20(k).

Dated: February 26, 1986.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 86–4672 Filed 3–3–86; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Kanuti National Wildlife Refuge, AK; Draft Comprehensive Conservation Plan/Environmental Impact Statement and Wilderness Review

February 25, 1986.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared for public review a draft Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Kanuti National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008 and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) section 3(d) of the Wilderness Act of 1964, and section 102(2)(C) of the National Environmental Policy Act of 1969. The final CCP/EIS describes three alternative strategies for long-term management of the 1,291,100 acre refuge. The plan also reviews these lands as to their suitability under each management alternative for possible addition to the National Wilderness Preservation System.

DATES: Comments on the draft CCP/EIS must be submitted on or before June 9, 1986, to receive consideration by the Regional Director.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199, telephone (907) 786–3399.

A draft CCP/EIS has been prepared for general distribution. Copies of the draft comprehensive plan will be sent to all persons and organizations who participated in either the scoping, alternative workshops, and/or public review process. Copies of the draft CCP)/EIS have been sent to all agencies that particpated in the public review process and to agencies and persons who have already requested copies. Those wishing to receive a copy of the draft may obtain one by contacting Mr. Knauer. Copies of the draft CCP/EIS are also available for review at the above location, at the Kanuti National Wildlife Refuge Office, Federal Office Building, 101 12th Avenue, Room 8–B, Fairbanks, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Streets, NW, Department of the Interior, Washington, DC 20240
U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232
U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158
U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The draft CCP/EIS for the Kanuti National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317(a) and Section 1008 of ANILCA and section 3(d) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include hunting, fishing and habitats, trapping, transportation and access, and public use. The draft CCP/EIS addresses three alternatives for long-range management of the refuge including one that would continue current management. A second alternative proposes the entire refuge for wilderness designation and the third alternative emphasizes management and restoration of fish and wildlife populations to historic levels and allows increased opportunity for hunting, fishing and trapping above current levels. A preferred alternative is identified.

The plan also addresses the general wilderness suitability of 1,291,000 acres of now-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for perservation as wilderness and report his recommendations to the President by 1985.

The Notice of Intent to prepare the CCP/EIS and Wilderness Review was published in the March 8, 1984, **Federal Register**. Other government agencies and the general public contributed to the development of this draft CCP/EIS and Wilderness Review.

Robert E. Gilmore,

Regional Director.

[FR Doc. 86-4619 Filed 3-3-86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Availability of Draft Carlsbad Resource Area Resource Management Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management announces the availability of the Draft Carlsbad Resource Area Resource Management Plan (RMP)/ Environmental Impact Statement (EIS) for public review and comment. This document identifies and analyzes the future land use planning options for approximately 2,171,000 acres of Federal surface and 2,725,405 acres of Federal minerals, including all of Eddy and Lea Counties and southwest Chaves County. The Bureau of Land Management also proposes six Areas of Critical Environmental Concern (ACEC).

Public Participation:

Comments on the Draft RMP/EIS will be accepted until close of business June 9, 1986. There will be public hearings at the following location: Carlsbad, May 7, 1986, 2:00 p.m. and 7:00 p.m., Carlsbad Municipal Library, Halagueno Park and Fox Street.

Oral testimony will be limited to 10 minutes. Written comments are encouraged even if an oral presentation is made.

A copy of the Draft RMP/EIS will be sent to all individuals, Government agencies and groups who have expressed an interest in the Carlsbad Resource Area planning process. In addition, review copies may be examined at the following locations.

Bureau of Land Management Offices

New Mexico State Office, Public Affairs Staff, Room 2016, U.S. Post Office and Federal Bldg., P.O. Box 1449, Santa Fe, New Mexico 87501, (505) 988-6316
Carlsbad Resource Area, 101 E. Mermod, P.O. Box 1778, Carlsbad, New Mexico 88220, (505) 887-6544
Roswell District Office, 1717 W. Second Street, P.O. Box 1397, Roswell, New Mexico 88201 (505) 622-9042

Supplemental Information

Four alternatives have been developed that describe the different management options available to Bureau of Land Management for the Carlsbad Resource Area and are analyzed in the Draft RMP/EIS.

Alternative A describes the cumulative effects of continuing current management, both in the short-term (up to 10 years) and the long-term (up to 20 years).

Alternative B emphasizes production and/or consumption of resources with high priority given to programs that might improve economic conditions in the Resource Area. Alternative B provides the minimum acceptable level of resource protection while still having only minimal impacts on industry.

Alternative C is the preferred alternative and would change current management to meet statutory requirements and policy commitments and would resolve issues by balancing resource utilization with conservation.

Alternative D emphasizes resolution of issues in favor of resource protection and preservation of sensitive, natural, cultural and aesthetic values. Alternative D1 constitutes a no grazing alternative and was developed to analyze the effects of eliminating all domestic livestock from allotments west of the Pecos River.

Areas of Critical Environmental Concern

Six ACEC's are recommended for designation. These areas are discussed briefly below:

1. The Chosa Draw Caves Complex (2,200 acres) includes all or portions of Sections 20, 21, 22, 27, 28, 29 and 33 of T. 25 S., R. 25 E. This area contains an extensive gypsum cave complex. The Parks Ranch Cave of the complex is the second longest gypsum cave recorded on the North American continent and the only known cave on public lands in New Mexico with a perennial water supply supporting aquatic cave fauna.

2. Dark Canyon (3,950 acres) includes all or portions of Sections 24, 25, 34 and 35 of T. 24 S., R. 23 E., and Sections 15, 17, 19, 20, 21, 22, 23 and 30 of T. 24 S., R. 24 E. The area contains a highly scenic canyon section of one of the major drainages of the Guadalupe Mountains and harbors two State Listed Endangered plant species and four limestone caves containing fragile cave resources.

3. Lonesome Ridge (2,990 acres) includes all or portions of Sections 19, 20, 21, 22, 28, 30 and 31 of T. 26 S., R. 22 E. This area contains a great diversity of high scenic, wildlife, plant, geologic and

other natural history values. It is part of the Guadalupe escarpment, the world's foremost example of a Permian age fossil reef. The area includes a Federally Listed Threatened plant species, two State Listed Endangered plant species and important cave resources.

4. Blue Spring (160 acres) includes a portion of Section 33, T. 24 S., R. 26 E. Blue Spring contains endemic fish populations including the Federally Listed Threatened Pecos Gambusia. It is a significant source of water in a desert environment with riparian habitat important for a variety of wildlife species.

5. Yeso Hills (5,460 acres) includes all or portions of Sections 13, 14, 15, 22, 23, 24, 25, 27, 34 and 35 of T. 26 S., R. 24 E. The area contains the only outcrop of the Castile Formation in the Resource Area and a population of a State Listed Endangered plant species as well as suitable habitat for a State Listed Endangered animal species and a Federally Listed Threatened plant species.

6. Pecos River/Canyons Complex (5,190 acres) includes all or portions of Sections 23, 24, 25, 26, 27, 28, 32, 33, 34 and 35 of T. 24 S., R. 29 E.; Sections 4 and 5 of T. 25 S., R. 29 E.; and Sections 30 and 31 of T. 24 S., R. 30 E. This area is composed to two large distinctive canyons converging with the Pecos River and includes unique riparian habitat, many diverse soil types, unspoiled scenic values, large and culturally complex archaeological sites and prime wildlife habitat for several State Endangered animal species as well as suitable habitat for several Federally Listed Threatened, Federal candidate and State Listed Endangered animal and plant species.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain copies of the Draft RMP/EIS, contact Charles Dahlen, Area Manager, Carlsbad Resource Area, P.O. Box 1778, Carlsbad, New Mexico 88220, (505) 887-6544.

Dated: February 25, 1986.

Monte G. Jordan,

Associate State Director.

[FR Doc. 86-4645 Filed 3-3-86; 8:45 am]

BILLING CODE 4310-JB-M

Butte District Advisory Council Meeting

The meeting of the Butte District Advisory Council scheduled for March 5 and 6 (51 FR 4656) has been postponed until further notice.

Dated: February 24, 1986.

Jack A. McIntosh,

District Manager, Butte District.

[FR Doc. 86-4593 Filed 3-3-86; 8:45 am]

BILLING CODE 4310-DN-M

[Alaska AA-48594-AL]

Proposed Reinstatement of Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48594-AL has been received covering the following lands:

Copper River Meridian, Alaska

T. 12 N., R. 3 W.,
Sec. 25, SW¼SE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from May 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48594-AL as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1985, subject to the terms and conditions cited above.

Dated: February 20, 1986.

Kay F. Kletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 86-4594 Filed 3-3-86; 8:45 am]

BILLING CODE 4310-JA-M

[U-54790]

Realty Action; Noncompetitive Sale of Public Lands in Uintah County, UT

The following described land has been examined and identified as suitable for disposal by sale under section 203 (90 Stat. 2750, 43 U.S.C. 1713) and section 209(b) (90 Stat. 2750, 43 U.S.C. 1719) of the Federal Land Policy and Management Act of 1976, at no less than the appraised fair market value ($6,050):

Salt Lake Meridian

T. 4 S., R. 21 E.,
Sec. 3: S½SE¼NW¼SW¼
The land described aggregates five acres.

This land is being offered at direct sale to Ms. Carol Rogers.

The land offered in this sale is for both the surface and subsurface estates. The United States will reserve the right to construct ditches and canals and will reserve an access right-of-way. Selling this land is consistent with Bureau planning and county zoning. The public interest will be well served by selling this land.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the Vernal District Manager, 170 South 500 East, Vernal, Utah 84078. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination.

Dean L. Evans,

Acting District Manager.

[FR Doc. 86-4595 Filed 3-3-86; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 22, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 19, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Colbert County

Leighton vicinity, *Johnson, John, House*, Near jct. of Fosters Mill and River Rds.

Lauderdale County

Florence vicinity, *Armistead, Peter F. Sr., House*, Waterloo Rd.
Smithsonia vinicity, *Koger, William, House*, Smithsonia-Rhodesville Rd.

Lawrence County

Courtland vicinity, *Albemarle*, Off US 72
Wheeler vicinity, *Bride's Hill*, Lock Rd.

Morgan County

Somerville vicinity, *Rice, Green Pryor, House* Off Rt 684
Trinity vinicity, *Murphey Dr. William E., House*, Off US 1

CALIFORNIA

Orange County

Orange, *Culver, C.Z., House*, 205 E. Palmyra

Santa Clara County

Palo Alto, *Ramona St. Architectural District*, 518–581 Ramona and 255–267 Hamilton

Santa Cruz County

Santa Cruz, *Carmelita Court*, 315–321 Main St.

FLORIDA

Duval County

Mission of San Juan del Puerto Archeological Site

IDAHO

Ada County

Boise, *Goreczky, Anton, House*, 1601 N. Seventh St.

ILLINOIS

Lake County

Waukegan *Great Lakes Naval Training Station*, Bounded by Cluverius Ave., Lake Michigan, G St. and Sheridan Ave.

KENTUCKY

Boyle County

Danville, *Birney, James, House (Danville MRA)*, Perryville Rd.
Danville, *Carnegie Library (Danville MRA)*, Center College Campus.
Danville, *Danville Cemetery (Danville MRA)*, N End of First St.
Danville, *Danville Commercial District (Danville MRA)*, W. Main between N. Fifth and N. First, and area bounded by S. Third, W. Walnut, and S. Fourth.
Danville, *East Main Street Historic District (Danville MRA)*, Nos. 419–619 E. Main St.
Danville, *First Presbyterian Church (Danville MRA)*, W. Main between N. Fifth and N. Sixth Sts.
Danville, *Gore House (Danville MRA)*, 359 Proctor
Danville, *Haskins, W. H., House (Danville MRA)*, 420 Lexington Ave.
Danville, *Lexington Avenue—Broadway Historic District (Danville MRA)*, W. and E. Lexington between N. Fifth and Old Wilderness Rd., and area bounded by N. Larrimore, W. Broadway, and N. Fifth
Danville, Maple Street District (Danville *MRA)*, Both sides of Maple Ave. between W. Main and High
Danville, *Warehouse District (Danville MRA)*, Intersection of Harding St. and W. Walnut
Danville, *Willis—Russel House (Danville MRA)*, 200–206 Walnut St.

Butler County

Carlston Annis Shell Mound (15Bt5) (Green River Shell Middens of Kentucky TR)
DeWeese Shell Mound (15Bt6) (Green River Shell Middens of Kentucky TR)
Rayburn Johnson Shell Mound (15Bt41) (Green River Shell Middens of Kentucky TR)
Read Shell Mound (15Bt10) (Green River Shell Middens of Kentucky TR)
Russell Shell Mound (15Bt11) (Green River Shell Middens of Kentucky TR)
Woodbury Shell Midden (15Bt67) (Green River Shell Middens of Kentucky TR)

Campbell County

Fort Thomas, *Fort Thomas Military Reservation District*, Roughly bounded by Pearson, Alexander, and Cochran Aves., River Rd., and S. Fort Thomas Ave.

Fayette County

Lexington, *Ashland Park Historic District*, Roughly bounded by S. Hanover Ave., Richmond Rd. to Fairway E, Woodspoint, Fontain and Tates Creek Rds.

Harlan County

Harlan, *Harlan Commercial District*, Roughly bounded by Mound, Second, Clover, and Main Sts.

Henderson County

Archeological Site KHC–3 (15He635) (Green River Shell Middens of Kentucky TR)
Archeological Site KHC–4 (15He580) (Green River Shell Middens of Kentucky TR)
Bluff City Shell Mound (15 He160) (Green River Shell Middens of Kentucky TR)
James Gilles Shell Midden (15He589) (Green River Shell Middens of Kentucky TR)

Jefferson County

Louisville, *Humphrey—McMeekin House*, 2240 Douglas Blvd.

McLean County

Archeological Site 15 McL16 (Green River Shell Middens of Kentucky TR)
Archeological Site 15 McL17 (Green River Shell Middens of Kentucky TR)
Archeological Site 15 McL26 (Green River Shell Middens of Kentucky TR)
Austin Site (15 McL15) (Green River Shell Middens of Kentucky TR)
Butterfield Site (15 McL7) (Green River Shell Middens of Kentucky TR)
Crowe Shell Midden (15 McL109) (Green River Shell Middens of Kentucky TR)
R.D. Ford Shell Midden (15McL2) (Green River Shell Middens of Kentucky TR)

Muhlenberg County

Archeological Site 15 Mu 41 (Green River Shell Middens of Kentucky TR)
Baker Site (15 Mu 12) (Green River Shell Middens of Kentucky TR)

Ohio County

Archeological Site KHC–6 (15 Oh97) (Green River Shell Middens of Kentucky TR)
Bowles Site (15 Oh13) (Green River Shell Middens of Kentucky TR)
Chiggerville Site (15 Oh1) (Green River Shell Middens of Kentucky TR)
J.T. Barnard Shell Midden (KHC–1) (Green River Shell Middens of Kentucky TR)
Jackson Bluff Site (15 Oh12) (Green River Shell Middens of Kentucky TR)
Jimtown Site (15 Oh19) (Green River Shell Middens of Kentucky TR)
Smallhous Shell Mound (15 Oh10) (Green River Shell Middens of Kentucky TR)

Shelby County

Shelbyville vicinity, *Hen. wood Hall*, KY 55 at Moody Pike

MAINE

Androscoggin County

Auburn, Briggs, William, Homestead, 1470 Turner St.

Aroostook County

Fort Fairfield, *Reed, Philo, House*, 38 Main St.
Presque Isle, *Presque Isle National Bank*, 422 Main St.

Penobscot County

Burlington, *Old Tavern*, ME 188 and Old Dam Rd.

Piscataquis County

Guilford, *Guilford Memorial Library*, Library and Water Sts.

Sagadahoc County

Richmond, *Peacock Tavern*, Route 201

Waldo County

Searsport, *Union Hall*, 3 Reservoir St.

MASSACHUSETTS

Berkshire County

Williamstown, *Williamstown Main Post Office*, 63 Spring St.

Hampshire County

Easthampton, *Easthampton Main Post Office*,- 19 Union St.

MINNESOTA

Freeborn County

Albert Lea, *Paine, H.A., House*, 609 W. Fountain St.
Clarks Grove, *Clarks Grove Cooperative Creamery*, Main St. E and Independence Ave.
Hayward Township, *Lodge Zare Zapadu*, County Hwy. 30
Mansfield Township, *Niebuhr, John, Farmhouse*, Off County Hwy. 2

Mower County

Adams, *First National Bank of Adams*, 322 Main St.
Austin, *Wright, Arthur W., House*, 300 Fourth Ave. NW
LeRoy, *First State Bank of LeRoy*, Main St. and Broadway
LeRoy, *LeRoy Public Library*, Luella St. and Broadway

MISSISSIPPI

Warren County

Vicksburg, *South Vicksburg Public School No. 200*, 900 Speed St.

NEBRASKA

Cass County

Weeping Water, *Gibson House*, 107 Clinton

Douglas County

Omaha, *Ford Hospital*, 121–129 S. Twenty-fifth St.
Omaha, *North Presbyterian Church*, 3105 N.Twenty-fourth St.

Lincoln County

Wallace, *Johnson Memorial Building*, Off NE 25

Saunders County

Morse Bluff, *Rad Plzen cis. 9 Z.C.B.J. (SD10–6), Off NE 79*

NEW HAMPSHIRE

Coos County

Lancaster, *Lancaster Main Post Office*, 120 Main St.

Hillsborough County

Peterborough, *Peterborough Post Office*, 23 Grove St.

Strafford County

Somersworth, *Somersworth Post Office*, 2 Elm St.

NEW YORK

Broome County

Binghamton, *Railroad Terminal Historic District*, Intersection of Chenango St. and Erie-Lackawanna Railroad Tracks

Chenango County

Columbus, *Columbus Community Church*, NY 80

Green County

West Coxsackie, *Houghtaling, Peter, Farm and Lime Kiln*, Lime Kiln Rd.

Kings County

Brooklyn, *Feuchtwanger Stable*, 159 Carlton Ave.

Monroe County

Rochester, *Building at 551–555 North Goodman Street*, 551–555 N. Goodman St.

New York County

New York, *Christodora House*, 147 Ave. B
New York, *Westchester House*, 541–551 Broome St.

Saratoga County

Waterford, *Ormsby-Laughlin Textile Companies Mill*, 31 Mohawk Ave.

Schoharie County

Central Bridge, *Westinghouse, George Jr., Birthplace and Boyhood Home*, Westinghouse Rd.

St. Lawrence County

Hannawa Falls, *Cox, Gardner, House*, Main St.

Suffolk County

Centerport, *LITTLE JENNIE (Chesapeake Bay bugeye)*, Centerport Harbor

Wayne County

Macedon, *Bullis, Charles, House*, 1727 Canandaigua Rd.

PENNSYLVANIA

Greene County

Sugar Grove Petroglyph Site (36GR5)

Lancaster County

Lancaster Township, *Northeast Lancaster Township Historic District*, Roughly bounded by Marietta, Race, and Wheatland Aves., and Wilson Dr.

Westmoreland County

Household No. 1 Site (36WM61)

PUERTO RICO

Aguadilla County

Aguadilla, *Casa de Piedra*, 14 Progresso St.
Aguadilla, *Fuerte de la Concepcion*, Stahl St.

Coamo County

Coamo, *Hermitage Church of Nuestra Senora de Valvanera of Coamo*, Quinton and Carrion Maduro Sts.

Mayaguez County

Mayaguez, *United States Post Office and Courthouse*, McKinley and Piar DeFillo Sts.

SOUTH CAROLINA

Charleston County

Long Point Plantation

Lancaster County

Lancaster, *Springs, Leroy, House*, Catawba and Gay Sts.

[FR Doc. 86–4537 Filed 3–3–86; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30782]

Burlington Northern Railroad Co.; Trackage Rights Exemption; Missouri-Kansas-Texas Railroad Co.; Exemption

The Missouri-Kansas-Texas Railroad Company (MKT) has agreed to grant overhead trackage rights to the Burlington Northern Railroad Company (BN) between milepost 655.87 and milepost 657.30, a distance of approximately 1.43 miles, near Denison, TX. The trackage rights will be effective on March 1, 1986.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: January 25, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–4630 Filed 3–3–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-157)B]

Seaboard System Railroad, Inc.; Abandonment in Polk County, FL; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc., to abandon its 2.35-mile line of railroad between Lake Wales (milepost SV–867.65) and Sandland (milepost SV–870) in Polk County, FL.

A certificate will be issued authorizing this abandonment unless within 10 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: **"Rail Section, AB–OFA"**. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–4631 Filed 3–3–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant To Clean Water Act; Tosco Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 3, 1985, a proposed consent decree in *United States* v. *Tosco Corporation* (N.D. Cal.) Civil Action No. C–84–6383 WWS, was lodged with the United States District Court for the Northern District of California. The complaint filed by the United States alleged that Tosco Corporation had violated the Clean Water Act by discharging pollutants into Suisun Bay in excess of the effluent limitations contained in its National Pollutant Discharge Elimination System Permit. The complaint sought civil penalties and injunctive relief to enjoin defendants from further violations. The consent decree provides that defendants will pay a civil penalty for past

violations, and will be enjoined from further violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent judgment. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Tosco Corporation*, D.J. Ref. 90–5–1–1–2199.

The proposed consent decree may be examined at the office of the United States Attorney, Room 16201 Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–4596 Filed 3–3–86; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances Application; M.D. Pharmaceutical, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 20, 1985, M.D. pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 3, 1986.

Dated: February 26, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–4644 Filed 3–3–86; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Assistant Secretary for Policy
Work Search Among UI Claimants
Other, one-time survey
Individuals or households
3,000 responses; 1,000 hours; 1 form

This project will examine the effects of state Unemployment Insurance work-search requirements on claimant's benefit receipt, payment error rates, search behavior, and job-finding success. Information gathered will help program administrators refine state laws and practices to better meet program objectives. Respondents include former UI-benefit recipients.

Revision

Employment and Training Administration
National Longitudinal Surveys—Survey of Work Experience of Mature Women
1205–0044; LGT 3131, LGT 3133
Annually; Biennially
Individuals or households
3700 respondents; 1554 burden hours; 2 forms

The Department of Labor will use this information to determine the employment and training needs and develop labor market policies designed to ease the employment and unemployment problems faced by women aged 49–63. These women were

30–44 years of age when this longitudinal survey began in 1967.

Signed at Washington, DC, this 27th day of February 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–4686 Filed 3–3–86; 8:45 am]

BILLING CODE 4510-23-M

Office of the Assistant Secretary for Veterans' Employment and Training

Special Solicitation for Grant Application Job Training Partnership Act; Program Year 1986

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures and schedule for the special Solicitation for Grant Application (SGA) for the operation of veterans' employment and training programs in the States of Alaska, Louisiana, and Maryland and in the District of Columbia in accordance with Title IV, Part C of the Job Training Partnership Act (JTPA). The regulations at 20 Code of Federal Regulations (CFR) Part 635 provide guidance for the development and administration of programs authorized under this part.

DATE: The SGA will be available for issuance as of the date of this notice. The closing date for receipt of grant applications in response to the SGA is April 21, 1986.

ADDRESS: A copy of the SGA may be obtained by written request only, including two self-addressed mailing labels, to the State Director for Veterans' Employment and Training Service (SDVETS) located in the State in which the proposed program would operate. The applicable addresses are as follows:

Alaska

SDVETS Burton Finley, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 3–7000, Juneau, Alaska 99802, (907) 465–2723

Louisiana

SDVETS Leonard Walters, Veterans' Employment and Training Service, U.S. Department of Labor, Employment Security Bldg., 1001 N. 23rd Street, Room 242, Baton Rouge, Louisiana 70804, (504) 342–4691

Maryland

SDVETS Gary Lobdell, Veterans' Employment and Training Service, U.S. Department of Labor, 1100 North Eutaw Street, Rm. 205, Baltimore, Maryland 21201, (301) 383–5193

District of Columbia

SDVETS George H. Joiner, Veterans' Employment and Training Service, U.S. Department of Labor, 500 C Street, NW., Rm. 327, Washington, DC 20001, (202) 639–1076

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Juarez, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor (USDOL), 200 Constitution Ave., NW., Rm. S1316, Washington, DC 20210, Telephone (202) 523–8611, or the appropriate State Director for Veterans' Employment and Training Service.

SUPPLEMENTARY INFORMATION:

On January 2, 1986, the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, issued an SGA for the Job Training Partnership Act Title IV, Part C, Program Year 1986 funds. This part provides for programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service. Notice of the issuance was published in the **Federal Register** on December 13, 1985. A deadline of February 14, 1986 was established for receipt of applications.

The January 2, 1986 SGA limited eligible applicants to (1) the designated JTPA administrative entity for the State/Governor as recognized by the Employment and Training Administration, USDOL, and (2) service delivery area administrative entities as described in sections 101 and 103 of the JTPA, including single statewide service delivery areas. The SGA also stated that if in any State no eligible applicant applied for funds within the specified timeframe, the definition of eligible applicant would be broadened in those States and a special solicitation would be issued to provide services to targeted veterans in those States.

No eligible applicant applied for funds within the established timeframe in the States of Alaska, Louisiana, and Maryland and in the District of Columbia. Accordingly, the Assistant Secretary for Veterans' Employment and Training announces the availability of funds to implement programs in each of these States in the following amounts:

State	Amount available
Alaska	$70,000
Louisiana	123,000
Maryland	143,000
District of Columbia	55,000

Applications for funds based on the SGA will be accepted from public agencies; community-based organizations; units of local and State government; Indian tribes, bands, or groups on Federal or State reservations; Alaskan Native entities; educational institutions; and private for profit and nonprofit organizations.

Each applicant, as of the date of this notice and at the time of application, must be geographically located in the State in which the proposed program would be implemented. Further, each applicant must demonstrate that it possesses the requisite understanding and capabilities to conduct an effective program for targeted veterans.

Applications for funds must be received by the appropriate State Director for Veterans' Employment and Training Service (SDVETS) not later than 4:30 p.m., at the SDVETS' address noted above on April 21, 1986.

It is anticipated that grant awards will be made by November 1986.

Consultation and technical assistance relative to the development of an application under the SGA is available upon request from the appropriate State Director for Veterans' Employment and Training Service.

Signed at Washington, DC, this 27th day of February 1986.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 86–4685 Filed 3–3–86; 8:45 am]

BILLING CODE 4510-79-M

Employment and Training Administration

Assistance Adjustance; Investigations Regarding Certifications of Eligibility To Apply for Worker; Amax Chemical Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II,

Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 14, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 14, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 24th day of February 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Amax Chemical Corp. (USWA)	Carlsbad, NM	2/18/86	2/14/86	TA-W-17,223	Potash.
Carleanie, Inc. (workers)	Minersville, PA	1/14/86	1/3/86	TA-W-17,224	Ladies' sportswear and dresses.
Dresser Industries, Inc., Ideco Div. (CAWIU)	Beaumont, TX	2/19/86	2/14/86	TA-W-17,225	Oilfield drilling equipment.
Gould & Scammon (workers)	Auburn, ME	2/18/86	2/7/86	TA-W-17,226	Shoe counters.
Hibbing Taconite Co. (USWA)	Hibbing, MN	2/18/86	2/14/86	TA-W-17,227	Taconite pellets.
International Hat Co. (workers)	Piedmont, MO	2/19/86	2/14/86	TA-W-17,228	Baseball caps.
Lake Side Mills, Inc. (ACTWU)	Buffalo, NY	2/10/86	2/5/86	TA-W-17,229	Fake fur, knits, stuffed animals.
Liebert Corporation (workers)	Sacramento, CA	2/14/86	2/4/86	TA-W-17,230	Power line distortion monitors.
Lundburg Industries (USWA)	Carlsbad, NM	2/18/86	2/14/86	TA-W-17,231	Potash.
Offshore Navigation Inc. (company)	Harahan, LA	2/19/86	2/6/86	TA-W-17,232	Radiopositioning service to geophisical companies.
Ultra Light Systems, Inc. (company)	Perris, CA	2/17/86	2/5/86	TA-W-17,233	Light aircraft wing and tail surfaces.
Van Huffel Tube Corp. (USWA)	Warren, OH	2/19/86	2/18/86	TA-W-17,234	Round, square, rectangular, mandrel tubing, plus oil country and flareweld pipe.
Alcoa, Inc., Vancouver Operation (Aluminum, Brick & Glass).	Vancouver, WA	2/18/86	2/12/86	TA-W-17,235	Aluminum ingot, wire, etc.
Bel Aire Products Co. (workers)	Akron, OH	2/13/86	2/7/86	TA-W-17,236	Sporting goods accessories.
General Electric Co., Drive System Operation (company)	Salem, VA	2/18/86	2/6/86	TA-W-17,237	Customized electronic control systems for automation of industrial processes.
Inspiration Copper Co., Open Pit Mining Div. (workers)	Claypool, AZ	2/6/86	2/3/86	TA-W-17,238	Copper mining, milling.
Lynchburg Foundry—Lower Basin (wkrs)	Lynchburg, VA	2/18/86	2/13/86	TA-W-17,239	Castings, auto, farm equipment, heavy duty trucks, farm tractors.
R&M Manufacturing Corp. (company)	Leominster, MA	2/18/86	2/2/86	TA-W-17,240	Women's loungewear.

[FR Doc. 86-4489 Filed 3-3-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,325]

Negative Determination, Regarding Application for Reconsideration; AT&T Network Systems, Columbus, OH

By an application dated February 5, 1986, the International Brotherhood of Electrical Workers (IBEW) requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at AT&T Network Systems, Columbus, Ohio. The determination was published in the **Federal Register** on January 21, 1986 (52 FR 2773).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that company imports and technology changes adversely affected employment at the Columbus plant of AT&T Network Systems.

Workers at the Columbus plant produce central office telephone switching equipment and associated apparatus like equal access switching equipment. The layoffs at the Columbus plant were the result of production realignments as newer switching products replaced older vintage models. Worker separations resulting from technological changes would not form a basis for certification. Further, the Bell operating companies decreased their demand after having filled their needs for "equal access" equipment. Company officials indicated that production resulting from the court-mandated decision on "equal access" equipment was a one-shot program. Sales of equal access equipment to the Bell operating companies provide other carriers such as MCI and Sprint equal access to the long distance market. Worker separations resulting from the completing of this program would not form a basis for certification.

Findings in the Department's investigation show that company imports of all products were negligible relative to total production at the Columbus plant. Company officials reported that company imports were not used as a replacement for domestic production at the plant. According to company officials, company imports resulted from demand for their products that exceeded their manufacturing capacity.

The Department's survey of all Bell Telephone regional operating companies showed that most of the Bell operating companies did not purchase imported central office switching equipment and associated apparatus in 1983, 1984 and in the January–September 1985 period. The few operating companies which imported switching equipment represented a small proportion of the survey group's total purchase reduction from AT&T Network Systems in 1984 and in the January–September 1985 period. Imports for these operating companies accounted for a small proportion of their overall product requirements during the above mentioned time periods.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of February 1986.

James D. Van Erden,

Acting Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-4687 Filed 3-3-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,184 et al]

Adjustments Assistance; Amended Certification Regarding Eligibility To Apply for Worker; Control Data Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 10, 1985, applicable to all workers at Control Data Corporation, Magnetic Peripherals. The Notice of Certification was published in the **Federal Register** on January 7, 1986 (51 FR 695).

Based on additional information furnished by the company identifying an administrative support group that was fully dedicated to the support of the head arm assemblies produced at Eden Prairie, the Department is amending the certification.

The intent of the certification is to cover all workers of the Head Manufacturing Administration at Edina, Minnesota who were engaged in employment related to the production of head arm assemblies and who were adversely affected by increased imports of head arm assemblies.

The certification is amended by including the Head Manufacturing Administration of Magnetic Peripherals, Incorporated at Edina, Minnesota.

The certification applicable to TA-W-16,184 and TA-W-16,410 is hereby amended and issued as follows: "All workers of Head Manufacturing Administration, Edina, Minnesota and the Eden Prairie, Minnesota facility of Magnetic Peripherals, Inc., subsidiary of Control Data Corporation, who became totally or partially separated from employment on or after July 8, 1984" and, "all workers of the Bemidji, Minnesota facility of Magnetic Peripherals, Inc., subsidiary of Control Data Corporation who became totally or partially separated from employment on or after September 5, 1984 and before June 1, 1985, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 26th day of February 1986.

James D. Van Erden,

Acting Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-4688 Filed 3-3-86; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Diamond Chain Co., Indianapolis, IN

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 17, 1986 to February 21, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,462; Diamond Chain Co., Indianapolis, IN

TA-W-16,282; Eaton Corp/Yale Materials Handling Corp., Salem VA

TA-W-16,445; Luray Textiles, Luray, VA

TA-W-16,435; Vera Maxwell, Inc., New York, NY

TA-W-16,422; Northwest Automatic Products, Inc., Minneapolis, MN

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA-W-16,436; Weyerhaeuser Co., Plywood Div., Longview, WA

Aggregate U.S. imports of softwood veneer are negligible.

TA-W-16,434; Smith GM Power, Inc., Salt Lake City, UT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-16,421; Nationwide Studios, Inc., Miami, FL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-16,348; Data Products Corp., Juncos, PR

Separations from the subject firm resulted from a transfer of production to another domestic facility.

Affirmative Determinations

TA-W-16,497; Tobin Hamilton Co., Inc., Mansfield, MO

A certification was issued covering all workers of the firm separated on or after September 19, 1984.

TA-W-16,209; Opelika Manufacturing Corp., Opelika Sewing Plant, Opelika, AL

A certification was issued covering all workers of the firm separated on or after July 15, 1984.

TA-W-16,433; Samuel Brutin & Co., Paterson, NJ

TA-W-16,419; Florsheim Shoe Co., Poplar Bluff, MO

A certification was issued covering all workers of the firm separated on or after September 5, 1984.

TA-W-16,404; Star Sportswear Manufacturing Corp., Lynn, MA

A certification was issued covering all workers of the firm separated on or after September 10, 1984 and before July 31, 1985.

TA-W-16,495; The Timken Co., Ashland, OH

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA-W-16,496; The Timken Co., Bucyrus, OH

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA-W-16,360; Hedstrom Corp., Dothan, AL

A certification was issued covering all workers of the firm producing bicycles and wood products separated on or after August 19, 1984 and before October 15, 1985.

I hereby certify that the aforementioned determinations were issued during the period February 17,

1986 to February 21, 1986. Copies of the these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC during normal business hours or will be mailed to persons to write to the above address.

Dated: February 25, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-4690 Filed 3-3-86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activites Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent a request for an expedited review pursuant to the Paperwork Reduction Act, 44 U.S.C. 3507(g) to the Office of Management and Budget (OMB) for the following proposal for the collection of information.

ADDRESSES: Send comments to Ms. Edythe Manza, National Endowment for the Humanities, Administrative Services Office, Room 429, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0361) or Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-6880).

FOR FURTHER INFORMATION CONTACT: Ms. Edythe Manza, National Endowment for the Humanities, Administrative Services Office, Room 429, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0361) from whom copies of forms are available..

SUPPLEMENTARY INFORMATION: The 1986 appropriations for NEH included instructions to NEH to establish and administer the National Capital Arts and Cultural Affairs Program ("NCACAP"). NCACAP provides operating assistance in the form of NEH grants to qualify institutions in the Nation's Capital. The law instructs the NEH to establish an application process by March 1, 1986. NEH has requested the Director of OMB to approve and assign a control number by February 28, 1986, to the information collection form to be used in the application process. This entry is a new form. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: New Form.

Title: National Capital Arts and Cultural Affairs Program: Guidelines and Application materials

Form Number: Not yet designated

Frequency of Collection: Annual

Respondents: Qualifying institutions within the District of Columbia

Use: Application for funding

Estimated Number of Respondents: 15

Estimated Hours for Respondents to Provide Information: 10

Dated: February 26, 1986.

Susan Metts,

Acting Director of Administration.

[FR Doc. 86-4632 Filed 3-3-86; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

National Science Foundation's Senior Executive Service Performance Review Board; Membership

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 212, 1800 G Street, NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson or Ms. Patricia Bond at the above address or (202) 357-7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

John H. Moore, Deputy Director, Chairperson

Jeff Fenstermacher, Assistant Director for Administration, Executive Secretary

Rotating Membership

Judith Sunley, Deputy Director, Division of Mathematical Sciences, Directorate for Mathematical and Physical Sciences

Frank L. Huband, Director, Division of Electrical, Communications and Systems Engineering, Directorate for Engineering

Ian D. MacGregor, Deputy Director, Division of Earth Sciences, Directorate for Astronomical, Atmospheric, Earth and Ocean Sciences

William L. Stewart, Director, Division of Science Resources Studies, Directorate for Scientific, Technological and International Affairs

Alan I. Leshner, Executive Officer, Directorate for Biological, Behavioral and Social Sciences

Robert F. Watson, Head, Office of College Science Instrumentation, Directorate for Science and Engineering Education

James M. McCullough, Executive Assistant to Director, Office of Legislative and Public Affairs, Office of the Director

Dated: February 26, 1986.

Margaret L. Windus,

Director, Division of Personnel and Management.

[FR Doc. 86-4651 Filed 3-3-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293, License No. DPR-35 and EA 85-106]

Boston Edison Co. (Pilgrim Nuclear Power Station); Order Imposing a Civil Monetary Penalty

I

Boston Edison Company, Boston, Massachusetts 02193 (the licensee) is the holder of License No. DPR-35 issued by the Nuclear Regulatory Commission (the Commission/NRC). The license authorizes the licensee to operate the Pilgrim Nuclear Power Station, Plymouth, Massachusetts, in accordance with the conditions specified therein.

II

On August 6-8, 1985 an NRC inspection was conducted to review the circumstances associated with the discovery by the licensees of two openings in a vital area barrier. During the inspection, two additional openings in the barrier were identified by an NRC inspector and it appeared that the

licensee had not conducted its activities in full compliance of NRC requirements. A written Notice of Violation and Proposed Imposition of a Civil Penalty was served upon the licensee by letter dated October 21, 1985. The Notice stated the nature of the violation, the provision of the Nuclear Regulatory Commission requirements that the licensee had violated, and the amount of civil penalty proposed for the violation. The licensee answered the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated November 27, 1985.

III

After consideration of the response and the statements of fact, explanation, and argument for remission or mitigation of the proposed civil penalty contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement has determined that the violation occurred as stated, was properly classified at a Severity Level III, and that the proposed penalty of $50,000 for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be mitigated by 50 percent.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Twenty-Five Thousand Dollars ($25,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may request a hearing within thirty days of the date of this Order. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request also shall be sent to the Executive Legal Director, U.S., Nuclear Regulatory Commission, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been maade by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland this 25th day of February 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86–4657 Filed 3–3–86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on March 20 and 21, 1986 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on March 20, recess and reconvene at 8:00 a.m. on March 21. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The March 20 session and a portion of the March 21 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456–7740, prior to 3:00 p.m. on March 19. Ms. Boyd is also available to 3:00 p.m. on March 19. Ms. Boyd is also available to provide specific information regarding time, place and agenda for the open session.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

February 25, 1986.

[FR Doc. 86–4748 Filed 3–3–86; 8:45 am]

BILLING CODE 3170-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Generalized System of Preferences; Notice of Public Hearings on Sodium Bromide

The purpose of this notice is to announce public hearings on the proposed modification of the list of articles eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP) to remove imports of sodium bromide (TSUS 420.82) from Israel.

1. Notice of Public Hearings

The GSP Subcommittee of the Trade Policy Staff Committee will hold public hearings on Friday, March 14, 1986, at 10:00 a.m. in Room 403 of the Winder Building, 600 17th St., NW., Washington, DC as part of its review of the proposed modification of the list of articles eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP) to remove imports of sodium bromide (TSUS 420.82) from Israel. This review was initiated at the request of the U.S. Bromine Alliance. Interested parties are invited to submit testimony or written comments.

2. Deadline for Receipt of Requests to Participate in Public Hearings.

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or

statements and should be received by the Chairman of the GSP Subcommittee no later than the close of business Tuesday, March 11, 1986. Oral testimony should summarize supplement information contained in briefs or statements submitted for the record. Parties requesting to testify will be notified by March 12 of the estimated time of their appearance before the GSP Subcommittee. The hearing will be open to the public and the transcript will be made available for public inspection or purchase from the reporting company. Post-hearing briefs or statements will be accepted if submitted in twenty copies, in English, no later than close of business Friday, April 4, 1986. Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, provided that such submissions are received by Friday, March 14, 1986. Rebuttal briefs will be accepted if submitted in twenty copies, in English, by close of business Friday, April 4, 1986.

2. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Parties submitting briefs or statements containing confidential information must indicate clearly on the cover page of each of the twenty copies submitted and on each page within the document, where appropriate, that confidential material is included. Non-confidential summaries of all confidential material must be submitted in twenty copies, in English, at the same time that confidential submissions are filed.

3. Communications

All communications with respect to this notice should be addressed to the Executive Director, Generalized System of Preferences, Office of the United States Trade Representative, 600 17th St., NW., Room 517, Washington, DC. 20506. Questions may be directed to any member of the GSP Information Center at (202) 395–6951.

4. Further Information

For further information about this review, see the notice published on February 18, 1986 (51 CFR 5817).

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86–4711 Filed 3–3–86; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–24029; 70–7168]

Columbia Gas System, Inc.; Proposal to Issue Common Stock Under Long-Term Incentive Plan; Order Authorizing Solicitation of Proxies

February 25, 1986.

Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company has filed a declaration with this Commission pursuant to sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(5) and 62 thereunder.

Columbia proposes, subject to stockholder approval, to issue and grant and/or sell up to 1.5 million shares of its common stock, pursuant to a new ten year Long-Term Incentive Plan ("Plan") which, in pertinent part, consists of, (a) Incentive Stock Options, (b) Non-qualified Stock Options, (c) Stock Appreciation Rights, and (d) Contingent Stock Awards. The maximum number of shares that may be awarded to any one individual during the like of the Plan is 10% of the total 1.5 million shares or 150,000 shares. The Plan will be administered by the Compensation Committee of Columbia's Board of Directors.

Columbia proposes to solicit proxies in this regard for voting at the 1986 Annual Meeting. Columbia has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

The declaration and any amendments thereto are available for public inspection through the Commission's office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 21, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this mater. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

It appearing to the Commission that Columbia's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–4671 Filed 3–3–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24030; 70–7223]

Columbia Gas System, Inc.; Proposed Issuance and Sale of Common Stock Pursuant To Dividend Reinvestment Plan; Exception From Competitive Bidding

February 25, 1986.

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company has filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

By Orders dated May 3, 1982 and April 24, 1985 (HCAR Nos. 22486 and 23695, respectively), Columbia was authorized to issue and sell 3,000,000 shares of Common Stock pursuant to the Dividend Reinvestment Plan ("Plan"). Of those 3,000,000 shares, 2,652,641 had been issued as of December 31, 1985. Columbia now proposes to issue and sell up to an additional 3,000,000 shares of its authorized but unissued common stock, $10 par value, through the Plan after full issuance of the remaining 347,359 shares authorized. The maximum optional cash payments through the Plan will increase from $5,000 to $10,000 per dividend payment, which is presently made quarterly. These shares will be issued from time to time through March 31, 1990. As of this date approximately 27,960 of Columbia's 112,973 shareholders are participating in the Plan.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 21, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549,

and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4670 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14957; 812-6282]

Shearson Lehman Special Portfolios; Application for an Amended Order Relating To Waiver of Contingent Deferred Sales Charges And Offer of Exchange

February 25, 1986.

Notice is hereby given that Shearson Lehman Special Portfolios ("Applicant"), Two World Trade Center, New York, New York 10048 filed an application on January 14, 1986, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order amending an outstanding exemptive order of the Commission dated September 5, 1985 (Investment Company Act Release No. 14706) ("Order"). The Order exempted the Applicant from 1) the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22d thereunder to the extent necessary to permit the assessment of a contingent deferred sales charge ("CDSC") on redemption of Applicant's shares, and to apply credits against the CDSC; and 2) the provisions of section 11(a) of the Act and permitting Applicant to offer to exchange shares of each of Applicant's series for shares of other Applicant's series at relative net asset value, subject to a $5.00 fee on each exchange. Applicant seeks to amend the Order to (1) modify the circumstances under which withdrawals made from Applicant's automatic cash withdrawal plan are not subject to a CDSC; (2) to modify a representation contained in the earlier application whereby Applicant agreed to limit the annual fee under its plan of distribution adopted under Rule 12b-1 to .75%. Applicant now proposes limiting such annual fee to permit series of Applicant's shares to pay an annual fee under Applicant's plan of distribution in accordance with Rule 12b-1, provided such fee does not exceed 1.25% of the average daily net assets of the relevant series; and (3) permit Applicant to offer to exchange each of its series for shares of any series of Shearson Lehman Special Equity Portfolios and any series of any other registered investment company designated by Applicant's Board of Trustees. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the relevant statutory provisions.

According to the application, Applicant is an open-end diversified management investment company registered under the Act and currently offers four series of shares: The Option Income Portfolio, the Long Term Government Securities Portfolio, the Intermediate Term Government Securities Portfolio and the Tax-Exempt Income Portfolio (collectively, the "Portfolios"). Applicant states that pursuant to the Order, Applicant's CDSC is waived on certain redemptions including its automatic cash withdrawal plan ("Withdrawal Plan"), which permits a shareholder owning Portfolio shares with a value in excess of $10,000 to elect to receive periodic cash payments of at least $50 monthly, but not more than 2% of the value of the shareholder's account at the time he elects to participate in the Withdrawal Plan. Applicant proposes to change the Withdrawal Plan and permit regular withdrawals in excess of 2%, and to modify the CDSC so that it is waived only on redemptions under the Withdrawal Plan not exceeding 2% of the value of shares held in a Portfolio at the time with Withdrawal Plan commences.

Applicant's Rule 12b-1 distribution plan ("Plan") provides for payment of an annual fee to Shearson Lehman Brothers, Inc. ("Shearson Lehman") for expenses incurred by it in connection with the offering of Applicant's shares. Applicant states that under the Plan, the distribution fee is paid monthly by Applicant with respect to each Portfolio at the annual rate of .75% of the daily net assets of the Portfolio. Applicant proposes that the Order be amended to permit it to change the fee a Portfolio pays, or any additional series or classes of shares offered by Applicant on substantially the same basis as Applicant offers the shares of the Portfolios ("Future Portfolios") with a fee that may be higher or lower, but in no event will the distribution fee payable by a Portfolio or a Future Portfolio exceed 1.25% of the daily net assets of the relevant Portfolio.

Applicant also proposes to extend Applicant's current offer to exchange shares of one Portfolio for shares of any other Portfolio to include shares of each Portfolio for shares of any portfolio of Shearson Lehman Special Equity Portfolios or any shares of any registered investment company which may be designated in the future by Applicant's Board of Trustees. Applicant states a CDSC will not be assessed on such exchanges; however, the $5.00 service charge, payable to Shearson Lehman, will be deducted on each exchange.

Applicant submits that the relief requested is consistent with the policies underlying the Act and is fair and in the interest of Applicant's shareholders. Applicant asserts that the bases on which the Order was issued will not be affected, and that modifying the wavier of the CDSC for Withdrawal Plan redemptions will bring the wavier into closer conformity with the operation of the CDSC generally. Applicant states that withdrawals may be made according to a schedule that results in the redemption of a shareholder's assets over approximately five years without imposition of the CDSC, however, automatic cash withdrawals made on a more accelerated basis are subject to the CDSC. Applicant states the proposed waiver will benefit investors by proving flexibility to make automatic withdrawals in excess of 2% of the value of their accounts, while simultaneously making programmed redemptions over a period shorter than five years subject to the CDSC on a basis similar to that of other shareholders making redemptions outside the Withdrawal Plan.

Applicant further submits that within the mutual fund industry a wide range of distribution fees are payable under distribution plans adopted under Rule 12b-1 under the Act. The range of fees is related to the nature and extent of the distribution effort required to market the varying types of shares. Applicant may seek to change the amount of the distribution fee currently payable by the Portfolios or to offer Future Portfolios in situations where a different distribution fee would be appropriate. These fees would be payable in accordance with a plan adopted according to Rule 12b-1 under the Act and shareholders of the relevant Portfolios will have the protections provided by Rule 12b-1 under the Act.

Applicant states that the Order was issued prior to the organization of Shearson Lehman Special Equity Portfolios and that exchanges of

Applicant's shares for shares of that Fund and of other designated investment companies which operate similar to Applicant will be made in the same manner and on the same terms as exchanges among the Portfolios.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 18, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4665 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22942; File No. SR-BSE-86-1]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to an Amendment to the Schedule of Value Charges.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1986 the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Effective February 3, 1986, the scheduled value charges for trades executed on the BSE has been amended. The value charge shall be $.16 per $1000 of contract value for the first $10 million in monthly trade value. Thereafter the value charge per $1000 of contract value shall decline to $.13, $.10, $.08, $.05, and $.03 for that portion of monthly trade values in excess of $10 million, $50 million, $100 million, $200 million and $500 million respectively.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

(1) The BSE has lowered value charges imposed on trades executed on the Boston Stock Exchange. The proposed amendment establishes a declining schedule of charges dependent upon the gross monthly value of trades executed. The purpose of the schedule is to encourage members to direct additional orderflow to the BSE, and to pass on to members the benefits of lower costs achieved through more efficient operations.

(2) The basis for the proposed charge is section 6(b)(4) of the Securities Exchange Act of 1934, as amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were solicited from the Fee Committee of the Board of Governors of the BSE comprised of representatives of dealer-specialist, retail and institutional firms.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Intersted persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 25, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4667 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22952; File No. SR-CBOE-85-53]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On December 23, 1985, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 under the Act,[2] a proposed rule change to allow CBOE to list series of options on the Standard and Poor's 500 Stock Index ("S&P 500 Index") that expire in up to five different

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

months: series expiring one and two months from the date of listing; series expiring in the two months from the March quarterly expiration cycle that follow the two near-term expiration months; and, at the discretion of the Exchange, series expiring in the month from the March cycle that follows these two far-term expiration months. Series in the discretionary fifth expiration month could have as much as eleven months to expiration at the time of listing. As an example of the effect of this rule change, after the February expiration, the months available for trading would be March, April, June and September, and perhaps December. The S&P 500 Index option currently trades on a quarterly, March expiration cycle, with series available in a maximum of three different months and the farthest term series being nine months to expiration upon listing.

The proposed rule change was noticed in Securities Exchange Act Release No. 22769 (January 6, 1986), 51 FR 1461 (January 13, 1986). No comments were received on the proposed rule change.

The Commission previously has approved as many as six expiration months for options on broad-based indexes like the S&P 500 Index.[3] The principal difference between these previously approved proposals and CBOE's current proposal is that the farthest-term series allowed under the previous rule changes have nine months to expiration at the time of listing while CBOE's proposal allows series with as much as eleven months to expiration upon listing.[4]

As the Commission previously has indicated, as a general regulatory matter expiration cycles may be left to the business judgment of the exchange.[5] As the Commission also has indicated, however, proposals to introduce new expiration months may raise regulatory concerns, principally ones concerning the liquidity in both the new series being introduced and in the series already allowed.[6] The Commission has stated that a balance must be sought between ensuring that market participants are provided an array of expirations adequate to their investment demands and ensuring that this array does not cause an excessive dilution of liquidity in open options series.[7]

In this case, the additional series CBOE proposes (three expiration months to five) is less than that previously approved by the Commission for other broad-based index options.[8]

The only new issue raised by the CBOE proposal is whether series of S&P 500 index options that have 11 months to expiration upon listing are likely to be significantly less liquid than the series with nine months to expiration currently allowed for other index options contracts that have series in five different expiration months.[9] The Commission has no reason to question the CBOE's judgment that the far-term eleven-months series allowed under CBOE's proposal will exhibit significantly less liquidity than the far-term nine months series available in the existing index options contracts that have five (or six) different expiration months.[10]

For these reasons, the Commission finds that the proposed rule change is consistent with requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 26, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4669 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

[3] *See, e.g.*, Securities Exchange Act Release Nos. 20330 and 20414 (October 26, and November 25, 1983), 48 FR 50651 and 54308 [New York ("NYSE") and American ("Amex") Stock Exchange proposals, respectively].

[4] Another difference is that the S&P 500 Index option is a European-style option while the other index options are American-style options. A European-style option can be exercised only on the day previous to its expiration. The Commission does not believe that the fact that the S&P 500 Index option is a European-style option raises special regulatory concerns regarding the number and arrangement of expiration months in this context.

[5] Amex Release note 3, *supra*. *See also* Securities Exchange Act Release No. 21512 (November 2, 1984), 49 FR 46858 [approving twelve-month options series for foreign currency options traded on the Philadelphia Stock Exchange, Inc. ("Phlx")] ("Phlx Release").

[6] *Id.*

[7] *Id.*

[8] Note 3, *supra*.

[9] *See also* the Phlx Release, note 5, *supra* (approving twelve months series for foreign currency options).

[10] Although the existing far-term nine-month series for index options contracts exhibit little volume relative to the near-term months where almost all volume is concentrated, the Commission assumes that volume for an eleven month series (as proposed by CBOE) would be similar—and not significantly less—as for the existing nine month series.

[Release No. 22878A; File No. ODD-86-1]

Self-Regulatory Organizations; the Options Clearing Corp.; Order Granting Approval to Supplement to Options Disclosure Document; Correction

On February 7, 1986, the Securities and Exchange Commission ("SEC") issued a release[1] approving the "ECU Disclosure Rider," a supplement to the options disclosure document filed pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 ("Act")[2] disclosing potential risks to holders and writers of options on the European Currency Unit ("ECU") in the event that a court were to set aside the SEC's February 3, 1986, orders approving the rules ofthe Philadelphia Stock Exchange, Inc. ("Phlx") and the Options Clearing Corporation ("OCC") pertaining to ECU options.[3] The order approving the "ECU Disclosure Rider" stated that this supplement would be required to be delivered for the 60-day period following publication in the **Federal Register** of the SEC's orders approving the Phlx and OCC ECU options rules. The SEC hereby revises that portion of the order to state that the "ECU Disclosure Rider" is required to be delivered for the 60-day period following the date of entry of the SEC's orders approving the OCC and Phlx proposals.[4] The date of entry of these orders was February 3, 1986,[5] thus the "ECU Disclosure Rider" will be required to be delivered until April 4, 1985.

For the Commisson, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4666 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 22878 (February 7, 1986), 51 FR 5630 (February 14, 1986).

[2] 17 CFR 240.9b-1 (1985).

[3] Securities Exchange Act Release Nos. 22853 and 22854 (February 3, 1986); 51 FR 5129 and 5128 (February 11, 1986).

[4] *See* section 25(a)(1) of the Act, 15 U.S.C. 78y (1982).

[5] 17 CFR 201.22(k) (1985).

[Release No. 34-22950; File No. SR-Phlx-86-1]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to Narrowing Maximum Allowable Bid-Ask Differential Applicable to Specialists and Registered Options Traders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 27, 1986 Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") proposes to amend Exchange Rule 1014(c)(i) to narrow the bid-ask differential applicable to single equity options and index options (the latter by operation of Exchange Rule 1000) traded on the Exchange. Italics indicates material proposed to be added; [brackets] indicate material proposed to be deleted:

Obligations and Restrictions Applicable to Specialists and Registered Option Traders

Rule 1014 (a) through (c)—No change.

(i) Options on Stocks. (A) Bidding and/or offering so as to create differences of no more than ¼ of $1 between the bid and the offer for each option contract for which the [last preceding transaction price was $.50] *prevailing bid is $1* or less, no more than [½] ⅜ of $1 where the [last preceding transaction price was] *prevailing bid is* more than $1 [.50] but [did] *does* not exceed $3 [10], *no more than* ½ of $1 where the prevailing bid is more than $3 but does not exceed $10, no more than ¾ of $1 where [the last preceding transaction price was] *the prevailing bid* is more than $10 but less than $20, and no more than $1 where the [last preceding transaction price was] *the prevailing bid is* $20 or more, provided that the Exchange may establish differences other than the above for one or more series or classes of options. [The bid-ask differentials as stated above shall apply to series of less than nine months. For all other series, the bid-ask differential shall be twice that stated above.]

(B) through (e) (iii)—unchanged

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to improve price continuity in single equity options contracts and index options contracts (the latter by operation of Exchange Rule 1000) for which the prevailing bid does not exceed $3 by narrowing the maximum allowable bid-ask differential and changing the reference point for such differential from the last preceding transaction to the prevailing bid.

For example, under the provisions of existing Rule 1014, a Specialist or Registered Options Trader must bid or offer so as to create a difference of no more than ¼ of $1 between the bid and offer for each option contract for which the last preceding transaction price was $.05 or less. The proposed amendments to Rule 1014 would, among other things, require a Specialist or Registered Options Trader to bid or offer so as to create a difference of no more than ¼ of $1 between the bid and offer for each option contract for which the prevailing bid is $1 or less. Similarly the bid-ask differential is narrowed in the case of a single equity option and index options for which the prevailing bid is more than $1 but does not exceed $3.

Additionally, the maximum bid-ask differentials set forth in existing Rule 1014 apply to series of less than nine months. Under the proposed amendments to the rule, such provision is deleted so as to make the maximum allowable bid-ask differentials applicable to all series of single equity options and index options.

Statutory Basis

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("the Act") in that it can be effected to promote the maintenance of fair and orderly markets and, in particular, section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organizations's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communcations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifith Street, NW., Washington, DC 20549. Copies of such filing will also be

available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 25, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 26, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4668 Filed 3-3 86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

February 25, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Triangle Industries, Inc.

Cumulative Preferred Stock, $1.00 Par Value (File No. 7-8845)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 19, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make wirtten comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheller,

Secretary.

[FR Doc. 4004 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

NYSTRS/NV Capital, Limited Partnership; Issuance of License To Operate as a Small Business Investment Company [License No. 02/02-0493]

On December 27, 1985, a notice was published in the **Federal Register** (50 FR 53053) stating that an application had been filed by NYSTRS/NV Capital, Limited Partnership, 1215 Western Avenue, Albany, New York 12203, with the Small Business Administration (SBA), for a license to operate as a small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing SBICs (13 CFR 107.102 (1985)).

Interested parties were given until the close of business January 25, 1986, to submit their comments on the application to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other information, SBA issued License No. 02/02-0493 to NYSTRS/NV Capital, Limited Partnership on February 7, 1986, to operate as a section 301(c) SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Busineess Investment Companies.)

Dated: February 24, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-4652 Filed 3-3-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2231]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on February 21, 1986, I find that the Counties of Lake, Marin, Napa, Sacramento, Santa Clara, Santa Cruz, Solano, Sonoma and Yuba constitute a disaster loan area because of damage from severe storms, landslides, mudslides and flooding beginning on or about February 12, 1986. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on April 24, 1986, and for economic injury until September 2, 1986, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 223106 for physical damage and for economic injury the number is 637900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 24, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-4653 Filed 3-3-86; 8:45 am]

BILLING CODE 8025-01-M

86-4538 Loan Guarantees; Pilot Project in the State of Illinois

AGENCY: Small Business Administration.

ACTION: Notice.

SUBJECT: Pilot Project in the State of Illinois.

SUMMARY: The Small Business Administration authorized a pilot program that is designed to increase the access of Illinois small businesses to fixed rate loans. This program is fully described at 48 FR 36533 (August 11, 1983) and amended at 49 FR 16916 (April 20, 1984). SBA published an extension of the program to March 31, 1986, at 50 FR 12680.

At the request of local and Regional SBA officials and representatives of the Illinois Department of Commerce and Community Affairs, SBA will extend the pilot program in the State of Illinois through September 30, 1986.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Financial Economist, Small Business Administration, Room 800, 1441 L St. NW., Washington, DC 20416 (202-653-5954).

(Catalog of Federal Domestic Assistance Programs, 59.012, Small Business Loans)

Dated: February 24, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-4538 Filed 3-3-86; 8:45 am]

BILLING CODE 8025-01-M

Wichita Advisory Council Meeting

The U.S. Small Business Administration, Region VII, located in the geographical area of Wichita, Kansas, will hold a public meeting from 11:00 a.m.-2:00 p.m., on Tuesday, March 11, 1986, at the Fourth Financial Center, Dining Room Lounge, 9th Floor, Wichita, Kansas, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Clayton Hunter, District Director, U.S. Small Business Administration, 110 E. Waterman, Wichita, Kansas (316) 269-6566.

Dated: February 26, 1986.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 86-4490 Filed 3-3-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/946]

Advisory Committee on Oceans and International Environmental and Scientific Affairs; Closed Meeting

The Department of State's Advisory Committee on Oceans and International Environmental and Scientific affairs will meet at 8:30 A.M. on Wednesday morning, March 26, 1986 in Conference Room 1107 of the Department of State, 22nd and C Streets, NW., Washington, DC in a session which will not be open to the public. As this session will include discussion of classified material and issues which are the subjects of ongoing meetings and negotiations will respect to fusion research, famine, and global warming, it has been closed pursuant to section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1) and 5 U.S.C. 552b (C)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in current and future negotiations. The meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on the meeting should be directed to Robert H. Goeckermann of OES/STS, Room 4329, Department of State. He may be reached by telephone on (202) 647-2764.

Dated: February 24, 1986.

John D. Negroponte,

Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

[FR Doc. 86-4606 Filed 3-3-86; 8:45 am]

BILLING CODE 4710-09-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 42
Tuesday, March 4, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, March 5, 1986.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, DC

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Management Review: Matrix Management

The Commission will reconsider a decision related to matrix management as a part of the ongoing management review.

2. ATVs: Preliminary Hazard Analysis

The staff will brief the Commission on the preliminary injury survey of all-terrain vehicles.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

Dated: February 21, 1986.

[FR Doc. 86–4772 Filed 2–28–86; 2:59 pm]

BILLING CODE 6355-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Friday, March 7, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and to establish six branches:

New Bedford Five Cents Savings Bank, New Bedford, Massachusetts, an insured mutual savings bank, for consent to merge, under its charter and title, with Fall River Savings Bank, Fall River, Massachusetts, a non-FDIC-insured mutual savings bank, and for consent to establish the six offices of Fall River Savings Bank as branches of the resultant bank.

Application for consent to purchase assets and assume liabilities and establish four branches:

Capitol Bank and Trust Company, Boston, Massachusetts, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Community Co-operative Bank, Medford, Massachusetts, a non-federally-insured institution, and for consent to establish the four offices of Community Co-operative Bank as branches of Capitol Bank and Trust Company.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report, December 31, 1985

Discussion Agenda:

Memorandum and Resolution re: Final amendment to Parts 303 and 309 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," and "Disclosure of Information," "respectively, which (1) requires persons who have filed notices with the Corporation under the Change in Bank Control Act of 1978 ("CBCA") (12 U.S.C. 1817(j)), to publish an announcement of the notice's acceptance in a newspaper, except that in the case of a public tender offer the announcement may be delayed until a tender offer commences; and (2) make certain information regarding CBCA notices accepted by the Corporation available to the public upon request, except in certain public tender offer situations.

Memorandum and Resolution re: Final amendment to the Corporation's rules and regulations in the form of a new Part 352, entitled "Nondiscrimination on the Basis of Handicap," which amendment, in implementing the spirit of Section 504 of the Rehabilitation Act of 1973, as amended, defines the scope of the Corporation's obligation to ensure that, to the extent practicable, handicapped persons are provided with equal access to Corporation programs and activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: February 28, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–4777 Filed 2–28–86; 3:26 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Friday, March 7, 1986 the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6),) (c)(8), and (c)(9)(A)(ii) of title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or

assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names or persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to purchase assets and assume liabilities:

Metropolitan Bank St. Paul, St. Paul, Minnesota, an insured State nonmember bank, for consent to purchase the assets of and assume the liabilty to pay deposits made in Metro Thrift Company, Inc., St. Paul, Minnesota, a non-FDIC-insured institution

Memorandum regard liquidation activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: February 28, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–4778 Filed 2–28–86; 3:27 pm]

BILLING CODE 6714–01–M

4

FEDERAL RESERVE SYSTEM; BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on February 26, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, March 5, 1986.

CHANGES IN THE MEETING: The open meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–4700 Filed 2–28–86; 10:35 am]

BILLING CODE 6210–01–M

5

FEDERAL RESERVE SYSTEM; BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 10, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding fees for directors of the Federal Reserve Bank and members of advisory panels of the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–4788 Filed 2–28–86; 3:53 pm]

BILLING CODE 6210–01–M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE–86–8]

TIME AND DATE: Monday, March 10, 1986 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
   a. Certain dynamic random access memories, components thereof, and products containing same (Docket No. 1283).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

February 27, 1986.

[FR Doc. 86–4775 Filed 2–28–86; 3:17 pm]

BILLING CODE 7020–02–M

7

INTERNATIONAL TRADE COMMISSION

[USITC SE–86–9]

TIME AND DATE: Friday, March 14, 1986 at 11:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Petitions and Complaints.
   a. Certain luggage products (Docket No. 1284).

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

February 27, 1986.

[FR Doc. 86–4776 Filed 2–28–86; 3:18 pm]

BILLING CODE 7020–02–M

8

LEGAL SERVICES CORPORATION

Committee on Audit and Appropriations

TIME AND DATE: Meeting will commence at 12:00 p.m., Thursday, March 13, 1986, and continue until 4:30 p.m. or until all official business is completed.

PLACE: Mississippi Band of Choctaw Indians, Tribal Office Building, Route 7, Philadelphia, Mississippi 39350.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Draft Minutes January 30, 1986
3. FY 1986 Consolidated Operating Budget

CONTACT PERSON FOR MORE INFORMATION: Joel Thimell, Policy Development, (202) 863–1842.

Dated Issued: February 27, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–4680 Filed 2–27–86; 4:55 pm]

BILLING CODE 6820–35–M

9

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The meeting will commence at 6:30 p.m., Wednesday, March 12, 1986, and continue until all official business is completed.

PLACE: Holiday Inn North, Spanish Oaks Room I and II, I–55 North Frontage Road, Jackson, Mississippi 39206.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Denial of Refunding—45 CFR 1625
   —Report from the Office of General Counsel
   —Public comment
   —Recommendations to Board
3. Other Regulations Adopted after April 27, 1984

CONTACT PERSON FOR MORE INFORMATION: Thomas A. Bovard, Counsel, Division of Policy Development, (202) 863–1842.

Date Issued: February 27, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–4681 Filed 2–27–86; 4:55 pm]

BILLING CODE 6820–35–M

10

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 3, 10, 17, and 24, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 3

Wednesday, March 5

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 10—Tentative

Tuesday, March 11

10:00 a.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)
2:00 p.m.
Briefing by DOE on R&D Results from TMI–2 Cleanup (Public Meeting)

Wednesday, March 12

2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7)

Thursday, March 13

10:00 a.m.
Briefing by Staff and Licensee on Status of Kerr McGee Sequoyah Fuel Facility (Public Meeting)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 14

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

Week of March 17—Tentative

Tuesday, March 18

2:00 p.m.
Briefing by Southern California Edison Co. on San Onofre-1 (Public Meeting)

Wednesday, March 19

10:00 a.m.
Periodic Briefing by Regional Administrators (Public Meeting)
2:00 p.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

Thursday, March 20

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 24—Tentative

Wednesday, March 26

10:00 a.m.
Quarterly Source Term Briefing (Public Meeting)
2:00 p.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 27

10:00 a.m.
Discussion/Possible Vote on Palo Verde-2 Full Power Operating License (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 28

10:00 a.m.
Advisory Committee on Reactor Safeguards (ACRS) Meeting on Safety Goals (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of "Review of ALAB–819 (In the Matter of Philadelphia Electric Company)" scheduled for February 27, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,

Office of the Secretary.

February 27, 1986.

[FR Doc. 86–4793 Filed 2–28–86; 3:56 pm]

BILLING CODE 7590–01–M

11

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1364]

TIME AND DATE: 10:30 a.m. (e.s.t.), Thursday, March. 6, 1986.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, TN.

STATUS: Open.

Agenda

Approval of minutes of meeting held on February 14, 1986.

Action Items

Old Business Items

1. Recommendation regarding program for compliance with Environmental Protection Agency's stack height regulation at Colbert, Johnsonville, Shawnee, and Widows Creek fossil plants.

New Business Items

B—Purchase Awards

B1. Invitation NQ–835085—Steam generator blowdown demineralizers for Watts Bar Nuclear Plant.

B2. Negotiation GF–453861—Dry fly ash facility for John Sevier Fossil Plant.

F—Unclassified

F1. Supplement to Agreement No. TV–61214A with Oak Ridge Operations, U.S. Department of Energy (DOE) providing for TVA to continue performing mapping services for DOE.

F2. Supplement to Contract No. TV–60035A with Environmental Protection Agency covering arrangements for TVA to continue the long-term water quality monitoring program of selected reservoirs in the Tennessee Valley region in order to evaluate their acid sensitivity.

F3. Contract No. TV–69143A among State of Alabama Community Colleges in Gadsden, the University of Alabama, the City of Gadsden, Alabama, and TVA to establish a joint research and training center to serve as a focal point for economic development as well as industrial development and training in advanced technologies.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: February 27, 1986.

W.F. Willis,

General Manager.

[FR Doc. 86–4731 Filed 2–28–86; 12:24 pm]

BILLING CODE 8120–01–M

federal register

Tuesday
March 4, 1986

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 435 and 442
Medicaid Program; Standards for Intermediate Care Facilities for the Mentally Retarded; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 442

[BERC-266-P]

Medicaid Program; Standards for Intermediate Care Facilities for the Mentally Retarded

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing a general revision of the standards for intermediate care facilities for the mentally retarded and persons with related conditions, (ICFs/MR). The standards are those requirements that ICFs/MR must meet in order to participate in the Medicaid program. This proposed rule is designed to increase the focus on the provision of active treatment services for clients, clarify Federal requirements, and maintain essential client protections. The major outcome of these proposed regulations would be to align Federal standards with contemporary care practices for residential care services for persons with mental retardation or other developmental disabilities. We are also proposing to make several technical changes and cross-references to achieve consistency with other existing regulations.

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on May 5, 1986.

ADDRESS: Mail Comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-266-P, P.O. Box 26676, Baltimore, Maryland 21207

In addition, please address a copy of your comments on the information collection requirements to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Fay Iudicello.

If your prefer, you may deliver your comments to one of the following addresses:

Room 309-G Hubert H. Humphrey Building 200 Independence Ave., SW., Washington, DC or

Room 132, East High Rise Building, 6325, Security Boulevard, Baltimore, Maryland

In commenting, please refer to file code BERC-266-P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Samuel Kidder (301) 597-5909.

SUPPLEMENTARY INFORMATION:

I. Background

General

Section 1905(c) of the Social Security Act authorizes optional Medicaid coverage for services in intermediate care facilities (ICFs). These are facilities that provide health-related care to individuals who do not need the degree of care commonly provided in hospitals or skilled nursing facilities, but who do require care and services above the level of room and board that can only be made available to them through institutional facilities. Section 1905(d) indicates that the term "intermediate care facility services" may include services in a public institution for the mentally retarded or persons with related conditions (ICF/MR). (Private facilities may also participate as ICFs/MR.)

Fifty States and jurisdictions currently cover ICF care; 49 of these include ICF/MR care and serve over 140,000 individuals in over 2,911 ICFs/MR, ranging in size from 4 beds to almost 1,500 beds.

ICF/MR Standards—Current Regulations

Current standards for ICFs/MR are found at 42 CFR Part 442, Subpart G. These standards were published in 1974 and are based primarily on the 1971 voluntary standards of the Accreditation Council for Facilities for the Mentally Retarded (AC/FMR), now renamed the Accreditation Council for Services to Mentally Retarded and Other Developmentally Disabled Persons (AC MRDD). The standards are the requirements that ICFs/MR must meet in order to participate in the Medicaid program. They were developed on the assumption that they would be used for the most part in large, public institutions which served as the principal source of out of the home placement of persons with mental retardation at the time the standards were published. Since the early 1970s, litigation, legislation, research and technological advances have influenced the way in which clients are identified, assessed, and provided services. The size of large institutions has steadily decreased and the provision of a broad spectrum of services to clients in community settings has expanded greatly in the last 10 years.

Despite these changes, the standards have not been significantly revised since they were originally published in 1974. We are proposing a general revision of the standards designed to increase the focus on the provision of active treatment services to clients, clarify Federal requirements, maintain essential client protections, and to provide State survey agencies with a more accurate mechanism for assessing quality of care.

II. Provisions of the Regulations

A. General Approach

In revising these standards, we have based our proposals primarily on the accreditation standards published in 1983 by the Accreditation Council for Services to Mentally Retarded and Other Developmentally Disabled Persons (AC MRDD), particularly in the Active Treatment Services section of our proposed standards. We have based our revisions on the following general principles:

- The standards should enable both the facility and monitoring agencies (State survey agencies and Federal reviewers) to form judgments about whether individuals' needs are being properly assessed and appropriate interventions planned and delivered.
- The standards should be applicable to all of the various sizes of facilities that provide services to the mentally retarded and should provide these facilities with greater flexibility in the administration of their programs.
- The standards should focus more on client and staff performance rather than on compliance with processes and paper requirements.
- The standards should provide for individual client protections, given the vulnerability and frequent isolation of many clients in ICFs/MR.

The major organizational and structural revisions to the standards are as follows:

- We are proposing to reorganize the standards into four major sections in order to eliminate duplicative language and provide the facilities and surveyors with a logical, accountable method of determining compliance.
- We are proposing to revise most of the detailed language of the current standards to give facilities greater ability to administer their programs, while recognizing their widely varying

sizes, locations and organizational structure. We would retain appropriate detail in the areas of needed client protections.

- We would reword much of the language contained in the current regulations to reflect contemporary terminology in the field of developmental disabilities. For example, we have substituted the term "client" for "resident" throughout the standards.
- We would retain necessary emphasis on health services, but we would revise the regulations to reflect the wide diversity in health care delivery systems utilized by ICFs/MR.
- The proposed standards emphasize the development of the individual client in defining the active treatment process. We have used the AC MRDD standards for active treatment as a guide and would tie professional qualifications and duties to the active treatment process.
- We would clarify numerous existing standards that have created problems for providers and reviewers (e.g., qualifications for the qualified mental retardation professional, thermostatically controlled water faucets, self-administration of medications, and the application of State nursing home health and sanitation standards).

We believe that the proposed modifications to the current regulations would result in an improved set of standards for ICFs/MR. Although not proposed in this notice, we are also considering using a "condition of participation" format for these regulations, and invite public comment on this approach.This change would make the regulations for ICFs/MR consistent with the organization of the Medicare and Medicaid regulations for skilled nursing facilities (SNFs). Under this format, requirements are characteristically grouped as conditions of participation, each of which contains standards that are used to assess compliance with the condition.

Although we have not used the conditions format at this time, we believe the standards could easily be organized into conditions of participation in the final regulations. For example, the standards could be organized into conditions of participation in the following way:

1. A condition of participation entitled "Administration and Management" could be structured to cover the proposed standards that involve overall policy direction and administrative requirements for the ICF/MR.

2. A condition of participation on client protections could encompass the proposed standards that require facilities to afford clients their legal and civil rights, including financial arrangements and staff treatment of clients.

3. We could establish a condition of participation on facility staffing to include all personnel qualifications, staff licensure and training requirements, and the direct care staff ratios. This would also include professional program services, because we believe that the qualifications and sufficiency of professional program staff directly impact on the facility's ability to provide the required active treatment services for their clients.

4. We could establish a condition of participation on behavior modification programs to cover all the standards that deal with this issue, including drug usage.

5. There could be a separate condition of participation on active treatment services to incorporate all the proposed standards that comprise an individual's active treatment program. This could include client assessment requirements for admissions, transfers, release, and the establishment and modification of a client's individual program plan.

6. There could be one condition of participation on health care services to cover the proposed standards on physician, nursing, dental, pharmacy, and laboratory services.

7. We could have a condition entitled "Physical Environment" that would regulate client living areas, space and equipment in other areas of the facility, and would include the standards on fire safety, building accessibility and use, and sanitation.

8. We could have one condition on all facets of dietary services.

Under such an approach, State agencies would survey for compliance with the conditions of participation and if a facility is found to meet *all* the proposed requirements at the condition level, it would be eligible for Medicaid certification. Facilities with deficiencies at the standard level could have up to 12 months to effectuate a corrective plan of action. We are particularly requesting public comments on the use of conditions and is potential impact on facility participation in the Medicaid ICF/MR program.

Although we are considering the use of the condition of participation format, we believe that the proposed regulations using standards also would ensure that clients are provided with quality care while at the same time recognizing the needs of facilities of widely differing characteristics. These changes are discussed in detail below.

B. Proposed Revisions to the Standards for ICFs/MR

Protection of Clients' Rights

Current regulations at 42 CFR 442.403 and 442.404 identify the rights of clients in ICFs/MR, including a residents' bill of rights. These standards were taken directly from the standards for general ICFs and contain detailed descriptions of clients' rights that are also stated in other sections of the standards. For example, § 442.404(f) of the existing regulations describes in detail a client's rights regarding the use of restraints. However, §§ 442.437 and 442.438 duplicate and overlap with the provisions of § 442.404(f). To eliminate this duplication, we are proposing to create a new section (see proposed § 442.401) entitled "Protection of Clients' Rights". This section would specify clients' rights and what the facility must do to assure that clients' rights are protected. The specific details relating to these rights have been retained in appropriate sections of these proposed regulations.

Throughout the standards, we use the terms "client, parents (if the clients are minors) or guardians" in recognition of the three persons who can act in a client's behalf unless otherwise determined by the State. By doing so, we do not intend to limit the State's authority to decide who can represent the client; rather, by using a consistent term denoting who must be informed, give permission, etc., we hope to minimize confusion. We are also proposing to eliminate the provision that allowed a qualified mental retardation professional to determine whether or not a client could understand his or her rights, which may have had the unintended effect of appearing to change the client's legal status without proper State adjudication.

Administrative Services

1. Client Finances: Current regulations at 42 CFR 442.406 contain the duties of the facility with regard to the protection of the finances of each client. We would retain this standard, but would simplify the language and include language from section 1861(j)(14) of the Act, referred to in section 1905(c) of the Act, which would require that the facility maintain a system that assures a complete accounting of clients' personal funds. (See proposed § 442.410.)

2. Governing Body: Current regulations (42 CFR 442.409 and 442.410) specify the duties of the governing body and set the qualifications for the chief executive officer. We would simplify and combine these standards. Proposed

regulations at § 442.412 would specify that the facility must have a governing body that exercises general direction over the facility, and sets the qualifications for and appoints the administrator of the facility. We would also require that the administrator possess knowledge of developmental disabilities.

3. Commnication With Clients, Parents, and Guardians: Current regulations at 42 CFR 442.414 specify the facility's responsibility to have an active program of communication with clients, parents, and guardians. We are proposing to retain this standard, with some minor modifications in language. We would add new requirements explicitly allowing family, clients and friends to participate in the active treatment process and clearly permitting leave for visits, trips and vacations in recognition of the importance of their continued involvement. (See proposed § 442.414.)

4. Compliance with Federal, State and Local Laws: Current regulations at 42 CFR 442.415 require that facilities meet all applicable Federal, State and local laws, regulations and codes pertaining to health and safety. We would retain this standard but would add a reference to civil rights laws (that is, section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112), Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), the Age Discrimination Act of 1975 (Pub. L. 94–135) and all regulations issued under the authority of these Acts). This means that the State's ICF/MR program must be in compliance with these laws and regulations, and each facility must be in compliance with those provisions of the laws and regulations which apply on a facility-specific basis. We would also eliminate other references throughout the standards which specify requirements already contained in State laws. Thus, facilities would continue to be required to meet all applicable laws, but surveyors would not have to duplicate the monitoring activities of other agencies. (See proposed § 442.416.)

5. Provision of Needed Services: We would clarify in the proposed regulations at 42 CFR 442.418(a) that, at a minimum, facilities are required to furnish directly the following:

- The services of a qualified mental retardation professional.
- The services of direct care staff.
- The development and monitoring of active treatment programs.
- Nursing services for clients with medical care plans.
- Living quarters.

Other services, such as physician, dental, pharmacy and food services, can be arranged for through outside resources (e.g., outside agencies or individuals who provide programs and services to the facility).

However, in all cases, the facility must assume responsibility for the provision of services. Current regulations at 42 CFR 442.417, 442.455 and 442.476 discuss the arrangements facilities may have with outside resources in order to furnish required services to their clients. We propose to consolidate these three sections into one standard (see proposed § 442.418(b)) that would specify that if the facility cannot furnish a needed service, it must have a written agreement with an outside resource to furnish the service. Under the proposed rules, the agreement would be required to contain the responsibilities of both parties and ensure that all standards contained in this subpart are met. The facility would be responsible for assuring that the outside services meet the needs of each client.

6. Personnel Policies: Current regulations at 42 CFR 442.427 discuss written personnel policies. We would retain the essential elements of this standard, however, we would not require the policies to be written. Additionally, we would add a provision to prohibit a facility from employing individuals with a history of child or client abuse, neglect or exploitation. (See proposed § 442.420.) As revised, this section would require that the facility:

- Develop and implement personnel policies that are available to all staff;
- Make job descriptions available for all positions;
- Prohibit employees with signs of symptoms of a communicable disease from working;
- Prohibit the employment of individuals with a history of child or client abuse, neglect or exploitation.

7. Licensure and Professional Standards: We propose to retain the standard on licensure and professional standards currently found at 42 CFR 442.428. We would, however, eliminate the requirement that the facility take into account the standards of professional conduct developed by professional societies because the licensure or certification itself carries with it applicable standards of conduct. (See proposed § 442.422.)

8. Staff Treatment of Clients: Treatment of clients by facility staff is currently discussed at 42 CFR 442.430. We are proposing to retain this standard as § 442.424, with some minor wording changes. The regulations would specify that the facility must develop policies and procedures to prohibit mistreatment, neglect, or abuse of clients, assure that alleged violations are reported immediately, and have evidence that all violations are reported and investigated promptly within 5 working days, and an appropriate penalty imposed.

9. Facility Staffing: Current regulations found at 42 CFR 442.431, 442.433, 442.445 and 442.473 address appropriate staffing of facilities, including the size and duties of the staff. We are proposing (see § 442.426) to combine these standards and also add new requirements for support staff. We would modify the current standards as follows:

a. We have retained the requirement that prohibits the facility from depending upon clients or volunteers to meet requirements for client care or support services. This provision is necessary to assure that volunteers supplement services but are not the sole providers of services.

b. We would prohibit direct care staff from being required to provide housekeeping or other support services to the extent that these duties interfere with the exercise of their primary direct care duties.

c. We would retain the requirement currently found in § 442.445 that in any unit housing more than 16 persons, there must be staff on duty *and awake*, when clients are present. This on duty and awake standard is especially important at night when clients are usually present and usually asleep. We would also retain the requirement that in units housing 16 or fewer clients, a responsible direct care staff person be immediately accessible to clients 24 hours a day. Among other concerns, these requirements would ensure the safe evacuation of clients in case of a fire or adverse weather conditions.

d. We would require that all facilities employ a qualified dietitian on either a full-time, part-time, or consultant basis, regardless of the size of the facility. We have not specified the frequency of this consultation and invite public comments on this issue. Additionally, under the proposed rule, a facility that does not employ a full-time dietitian would be required to designate a person to serve as the director of food services. Current regulations at § 442.473 contain different standards depending on the size of the facility, but do not require facilities serving fewer than 20 persons to employ a registered dietitian. These revisions would assure that all clients, not just those in large facilities, receive adequate dietary monitoring and menu planning.

10. Direct Care (Residential Living Unit) Staff: Current regulations at 42

CFR 442.445 contain the requirements regarding the ratio of direct care staff to clients. We would retain requirements for staff to client ratios with modifications (see proposed § 442.428). We would change the ratios to reflect present and on-duty staff rather than overall staff as specified in existing regulations. (The term "overall staff" attempts to account for present and on-duty staff, as well as for staff on leave and for vacant positions.) The proposed ratios reflect the existing ratios calculated without including staff on leave or vacant positions. In addition, in the proposed § 442.428(a) we have raised the age for children from six to twelve years because there are few young children in facilities today and because we believe children under age 12 require close staff involvement and supervision.

The proposed staff to client ratios for a 24-hour period follow below. These ratios would be considered the minimum requirements that a facility must meet and could be exceeded. Additionally, we have noted per shift ratios that have been applied through ICF/MR guidelines throughout the history of the program.

a. For each living unit serving children under 12 years or serving severely impaired clients, the present and on-duty staff to client ratio would be 1 to 3.2. On a shift basis, we would expect this ratio to equate to the following present and on-duty staff to client ratios:

- One to eight for the day shift.
- One to eight for the evening shift.
- One to sixteen for the night shift.

b. For each living unit serving moderately retarded clients, the present and on-duty staff to client ratio would be one to four. On a shift basis, we would expect this ratio to equate to the following present and on-duty staff to client ratios:

- One to eight for the day shift.
- One to sixteen for the evening shift.
- One to sixteen for the night shift.

We note that the day and evening shift ratios could be reversed at the discretion of the facility and based on client need.

c. For living units serving mildly retarded clients, the present and on-duty staff to client ratio would be 1 to 6.4. On a shift basis, we would expect this ratio to equate to the following present and on-duty staff to client ratios:

- One to sixteen for the day shift.
- One to sixteen for the evening shift.
- One to thirty-two for the night shift.

11. Staff Training Program: Current regulations at 42 CFR 442.432 require the facility to have a program for the continuing training of staff. We would revise this standard to emphasize the need for training of staff who work directly with clients to focus on skills directed toward clients' developmental and behavioral needs. In addition, we would require that staff members be able to demonstrate practical skills and techniques necessary to implement the individual program plans for each client under their care. This represents a major new focus on staff performance rather than only on process. (See proposed § 442.430.)

12. Client records: Current regulations at 42 CFR 442.499 to 442.504 contain the requirements a facility must follow with regard to client records. These sections contain many details regarding recordkeeping requirements that are duplicated in other areas of the current standards. We are proposing to consolidate general requirements regarding client records in § 442.432 which requires that the facility develop and maintain a comprehensive recordkeeping system that assures the confidentiality of records. While we would continue to identify specific records that must be kept regarding particular facets of care where appropriate, most notably in the active treatment section, in general we believe that the facility is able to determine the type of recordkeeping structure that best fits its needs.

13. Emergencies or Death of a Client: Current regulations at 42 CFR 442.426 require facilities to notify a client's parents or guardian of any significant incidents including illness, accident or death. We would delete certain requirements concerning autopsies since State laws address this issue. (See proposed § 442.434.)

14. Infection Control: In recognition of our continued concern for the safeguarding of client and staff health, we are proposing to add a new section (see proposed § 442.436) to require the facility to engage in an active program for the prevention, control and investigation of infection or communicable diseases.

Active Treatment Services

1. Active Treatment: We are proposing to create a new section in the standards on active treatment services. Section 1905(d) of the Social Security Act provides that payment may be made for services in an ICF/MR if the individual in the facility is receiving active treatment. Although the regulations are based on this statutory requirement, the specific requirements in the regulations related to it are scattered throughout the current ICF/MR standards. However, there is a definition of active treatment found in 42 CFR 435.1009 that we are also proposing to revise. In proposed § 442.440, we would require the facility to provide an active treatment program for each client that is directed toward either: (1) The acquisition of the skills necessary for the client's maximum possible independence, or (2) the prevention of regression or loss of current functional status in dependent clients where no further positive growth is demonstrable. We would also emphasize that active treatment must not include the maintenance of generally independent clients who function with little supervision or who require few if any significant active treatment services. The revised regulations will, for the first time, enable the surveyor to make a judgment about whether or not the facility is providing active treatment services for each client by specifically describing the process involved in the delivery of the active treatment program.

2. Admissions, Transfers, and Discharge: Current regulations at 42 CFR 442.418, 442.421, 442.424, and 442.425 discuss the process for admission, release, and transfer of clients. We would retain these provisions (see proposed § 442.442) with the following changes:

a. We would modify the language to require that facilities admit only those clients who are in need of active treatment services.

b. We would eliminate the provision that permits a facility to admit a client when the facility has determined that admission is not the best plan for the client. Under the statute, the facility can only receive Medicaid payment for those persons in need of and receiving active treatment.

c. We would permit admission evaluations to be based either on evaluations made by the facility or by outside sources. We would also require that a preadmission evaluation be completed or updated no more than 90 days before admission.

d. We would require that admission decisions be made by an interdisciplinary team based on a comprehensive evaluation of the client.

e. We would require a physician to participate in establishing the newly admitted client's individual program plan. This would ensure that these regulations are consistent with current Medicaid utilization control requirements at 42 CFR 456.380 that specify plan of care requirements for intermediate care facilities.

f. We would require that if a client is to be transferred or discharged, the facility must provide documentation that the client was transferred for good cause (e.g., medical reasons or the

facility or staff are unable to provide necessary services). The facility must also provide a final summary of the client's status at the time of transfer or discharge.

g. We would retain requirements dealing with planning for a client's discharge and adjustments to a new environment.

3. Individual Program Plan (IPP): In the proposed § 442.444, we would require that an interdisciplinary team representing the professions, disciplines or service areas relevant to each client's needs, develop an IPP for each client that states specific intervention objectives. Current regulations at § 442.421 require the facility to review the pre-admission evaluation within one month after admission. We would retain this requirement but make the focus client-oriented rather than facility-oriented, by requiring the participation of the client and the client's family, if obtainable and appropriate, in the development of an IPP for each client. We would require that the IPP outline specific objectives that are related to the client's developmental and behavioral management needs and: (1) Stated separately in terms of single behavioral outcomes, (2) assigned projected completion dates, (3) expressed in behavioral terms that provide measureable indices of progress, (4) organized to reflect a developmental progression appropriate to the individual, (5) assigned priorities and (6) specific to the programs and strategies to be used. We would also require that the IPP emphasize personal care skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing and grooming), until these skills are either accomplished or demonstrated to be developmentally unavailable to the client. We would also eliminate the word "prognosis" from this requirement, as this is essentially a medical term that lends itself to numerous interpretations inappropriate in this setting.

4. Program Implementation: Current regulations at 42 CFR 442.435 require the facility to develop an activity schedule for each resident that details how his or her time is to be spent, including the provision that there can be no more than 3 continuous hours of unscheduled activity. We would revise this section to require facilities to implement a continuous active treatment program for each client, consisting of the interventions and services needed to carry out the objectives identified in the IPP (see proposed § 442.446). We would retain the requirement that multi-handicapped, non-ambulatory clients spend a major portion of each waking day out of bed and outside of the bedroom area although this requirement would be included in the proposed standard relating to the IPP. (See proposed § 442.444(f).)

5. Program Documentation: There are numerous sections in the current standards that discuss program documentation and recordkeeping. We would consolidate these into one section (proposed § 442.448) that requires the facility to document, in measurable terms, the client's performance in relationship to the objectives contained in the IPP and to account for other major incidents related to the client's developmental, social, and behavioral status. Other programmatic recordkeeping to be performed will be left to the discretion of the facility.

6. *Program Monitoring and Change:* Current regulations at 42 CFR 442.422 require that the status of each resident be reviewed at least annually by the interdisciplinary team. We would retain this requirement, but would require that the review repeat the same initial process outlined in § 442.442. We would require that each client's program be coordinated and monitored by a qualified mental retardation professional who is employed by the facility. We would define a qualified mental retardation professional as a physician, a registered nurse, or an individual who holds at least a bachelor's degree in one of the professions defined in § 442.460 of these proposed standards and has at least one year of experience working directly with persons with mental retardation or other developmental disability. This would increase the number of persons qualified to serve as a qualified mental retardation professional. We considered numerous suggestions and proposals for changes in the requirements for the qualified mental retardation professional and we have received support of our approach from groups and individuals in the field. However, in recognition of the wide diversity of views about qualified mental retardation professional qualifications, we especially invite comments on this important client monitoring function.

We would also require that the facility establish a specially constituted committee to review, monitor, and approve individual behavior management and other programs. The committee would also review, monitor, and provide consultation to the administrator concerning facility-wide programs in behavior management, drug usage, etc. The committee would not have the authority to approve facility practices, but would serve to aid in client protection and act as a consultant for the administrator. (See proposed § 442.450.)

7. *Behavior Management:* Current regulations at 42 CFR 442.437–442.441 contain the requirements for behavior management. We are proposing to retain these requirements and update them by incorporating the current language of the voluntary standards of the Accreditation Council for Facilities for the Mentally Retarded and Developmentally Disabled (1983 edition). We would revise the current standards as follows:

a. We would require the facility to have written policies and procedures for the behavioral management of clients, to allow clients to participate in the development of these procedures, and to prohibit the use of coercion or abuse. We would prohibit the placement of a client alone in a room from which egress is not prossible, except when done as part of an organized behavior modification program. However, we are concerned that by permitting clients to be locked in a room, a new fire safety issue is raised. The fire safety standards that we have proposed (see 50 FR 45921, November 5, 1985, for details) include a new chapter 21 of the National Fire Protection Association's Life Safety Code entitiled "Residential Board and Care Occupancies" and its equivalency system, the Fire Safety Evaluation System for Board and Care Homes. These fire safety standards place a great emphasis on the client's own ability to remove him or herself from fire hazards and less emphasis on physical plant features. Thus, we specifically invite comments on the advisability of permitting clients to be in locked rooms and, if this practice is advisable, how can clients be protected from fire hazards. (See proposed § 442.452.)

b. We would require the facility to develop detailed behavior modification programs that are included in the client's IPPs, approved in writing by the facility's review committee and conducted only with the written consent of the client, parents, or legal guardian. (See proposed § 442.454.)

c. We would require that the facility have written procedures that contain specific details on who may use restraints, how they may be used, and a system for monitoring their use. The facility would be permitted to use physical restraints only if necessary to protect the client from injury to himself or herself or to others, or as part of an approved behavior modification program. (See proposed § 442.456.)

d. We would require that drugs used for behavior management be utilized only as a integral part of the client's IPP and be directed toward the reduction of, and eventually the elimination of, the behavior for which the drugs are used. We would eliminate the use of the term "chemical restraint" as this term has been used to refer to the application of any medication that was designed to alter or control behavior. A drug that facilitates needed (or appropriate) responses from the client is not a chemical restraint and any drug that is applied inappropriately can be a restraint. (See proposed § 442.458.)

8. *Professional Program Services:* The current standards for ICFs/MR specify the qualifications for the professional staff by cross-reference to the skilled nursing facility (SNF) definitions contained in 42 CFR 405.1101. Since few facility administrators have access to SNF regulations, we are proposing to consolidate these requirements into one standard (see proposed § 442.460) and to list the qualifications of each profession following the approach contained in the AC MRDD standards, section 4.7 of the 1983 edition.

We have discussed personnel qualifications with the relevant professional groups in order to bring the proposed requirements in line with contemporary practice. We are not proposing any changes in qualifications except where professional requirements have been modified by the relevant professional certifying or accrediting organization.

We propose adding qualifications for a new professional category. This is a general qualification standard for persons with at least a bachelor's degree in a human services field, in recognition of the fact that there are other disciplines not specified in this section that provide services to clients in ICFs/MR (for example, rehabilitation counselors). We propose to eliminate all sub-professional qualifications, but would not restrict a facility from hiring these individuals.

It is our desire that these proposed standards protect client safety and ensure appropriate treatment without imposing undue costs or restrictions on facility operations. We, therefore, encourage comments on the question of the need for identifying specific professional program staff and their qualifications (as well as the level of qualifications specified) and whether and to what extent facilities should have discretion in determining the need for and qualifications of such personnel. We also encourage comments as to alternative methods for ensuring appropriate treatment and protecting client safety, such as approaches which would focus on successful implementation of the client's IPP, rather than on the use of professional staff meeting particular qualifications.

9. Physician Services: Current regulations at 42 CFR 442.474 to 442.477 set forth the requirements for physician services. These standards were directed primarily toward organized health service departments in large institutions. We would revise the current requirements that are based on the size of the institution and focus instead on the needs of the clients. The regulations, as revised, would reflect the growing awareness that there are various ways facilities acquire health services for their clients and that not all clients require a medical care plan (i.e., a formalized plan for the provision of physician and related medical care services). We propose the following:

a. The facility would be required to provide physician services on a 24-hour a day basis. The facility would be allowed to use physician assistants and nurse practitioners to provide physician services to the extent permitted by State law. The facility would be responsible for providing or arranging for the provision or services to meet the client's full range of health needs, even if the client does not require a medical care plan but requires more than simple quarterly health review. (See proposed § 442.462.)

b. The physician would participate in the development and update of the client's IPP, and the development of a medical care plan of treatment if one is required. (See proposed § 442.464.)

c. The facility would be required to have a formal arrangement for providing each client with medical care that includes preventive health services as well as the provision of emergency treatment. (See proposed § 442.466). We would eliminate the requirement that the facility designate a physician to be responsible for maintaining the health conditions and practices of the facility, as this is the proper role for administrators and other responsible staff.

10. Nursing Services: Nursing services are discussed in current regulations at 42 CFR 442.478 to 442.481. We would revise these requirements as follows:

a. We would require the facility to provide nursing services in accordance with client needs. These services would include—

- Developing the IPP;
- If ordered by a physician, developing a medical care plan of treatment for a client;
- Surveillance of a client's health status at least quarterly, that is, an in-person, direct, physician observation of the client to detect signs and symptoms of health problems and poor hygiene practices; and
- Implementing preventive health measures (See proposed § 442.468).

b. To assure that each client's nursing needs are met, we would require that the facility have enough nursing staff to carry out the various nursing duties, including a licensed nurse on duty on one full shift seven days a week to supervise the nursing services provided to clients under a medical care plan. We would require that the facility utilize registered nurses as appropriate and as required by State law to perform the services described in this section, but other licensed nursing personnel may also be utilized. We would eliminate the specific qualifications for practical and vocational nurses because we believe that State and local laws adequately regulate the profession. We would require those facilities that employ only licensed practical or vocational nurses to have a formal arrangement with a registered nurse to serve on a consultant basis. (See proposed § 442.470.) We have not specified the frequency of this consultation and invite public comment on the issue.

1. Dental Services: The requirements for the provision of dental services to clients of ICFs/MR are currently found at 42 CFR 442.457 to 442.462. In order to assure that all clients receive necessary dental services we would revise the regulations as follows:

a. We would require that the facility provide or make arrangements for comprehensive dental diagnostic and treatment services for each client, and that dental professionals participate, as appropriate, in the development of the IPP as part of the interdisciplinary process. (See proposed § 442.472.)

b. We would retain the current requirement that comprehensive diagnostic services include a complete initial examination, periodic followup examinations, and entry of the results in clients' dental records. (See proposed § 442.474.)

c. We would require that comprehensive dental treatment include provisions for emergency treatment 24-hours a day and routine dental care as needed. (See proposed § 442.476.)

d. We would require that if the facility maintains an in-house dental service, a permanent record be kept for each client. If the facility does not maintain a service, it would be required to obtain a summary of the results of dental visits and maintain this in the client's record. (See proposed § 442.478.)

12. Pharmacy Services: Current regulations at 42 CFR 442.482 to 442.485 set forth the requirements for the provision of pharmacy services. We would revise many of the present requirements of these sections, while continuing to ensure proper storage, labeling, packaging, and review of drugs. We would also revise the regulations to take into account the fact that many facilities do not have in-house pharmacy services. We would revise the regulations as follows:

a. We would require the facility to provide drugs and biologicals, either from an in-house pharmacy or through outside sources. (See proposed § 442.480.)

b. We would revise the regulations to stress the importance of the pharmacist's involvement in the drug regimen reviews, even when the RN is doing the actual review. (See proposed § 442.482.)

c. We would require the facility to have an organized system for drug administration that assures that drugs are properly administered, without error, including those that are self administered. We would require that, where unlicensed personnel are allowed by State law to administer drugs, a licensed nurse participate in the training of these personnel in facility-specific drug administration procedures apart from and in addition to any State program. We would also require that drugs that are to be administered to clients while they are not under the direct care of the facility be packaged and labeled by a pharmacist. (See proposed § 442.484.)

d. We would require that the facility store drugs under lock and key except when they are being prepared for administration. We would also require that drugs be stored under proper conditions of sanitation, temperature, light, humidity, and security. The facility would be required to maintain records of the receipt and disposition of all controlled drugs and, on a sample basis, periodically reconscile the receipt and disposition of all controlled substances. (See proposed § 442.486.)

e. We would require that drugs be labeled in accordance with accepted professional principles and practices and that the facility not maintain outdated drugs or drug containers with worn, illegible, or missing labels. (See proposed § 442.488.)

13. Laboratory Services: Current Medicaid regulations at 42 CFR 440.30 require that independent laboratory services be provided by a laboratory that meets the requirements for participation in Medicare. 42 CFR 405.1310 through 405.1317 contain the conditions for coverage of services of independent laboratories. However, many large public ICFs/MR operate their own laboratories. In order to assure the health and safety of clients served by these laboratories, we are proposing to add a new section 442.489 which would contain the standards that the ICF/MR must meet if it elects to provide direct laboratory services on a routine basis. We propose the following:

a. We would include a general definition of laboratory services, specifying some of the services that could be supplied by such a laboratory.

b. We would require that the laboratory must either be licensed or approved as a laboratory according to State law (if it is located in a State that provides for licensing or approval of laboratories), or must meet the requirement specified in paragraph (c) through (f) of this section.

c. We would require that the laboratory meet the management requirements specified in 42 CFR 405.1316. Section 405.1316 requires, generally, that the laboratory maintain records and meet professionally acceptable standards.

d. We would require that the laboratory director be either (1) a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or (2) a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services. We specifically invite comments on these educational requirements for the laboratory director.

e. Under this proposal, we would require that the laboratory director provide adequate technical supervision of the laboratory services and ensure that staff have appropriate education and experience, are sufficient in numbers, and receive appropriate in-service training.

f. We would also require that laboratory technologists be technically competent to perform test procedures and report test results.

g. We would require that the laboratory meet the proficiency testing requirements specified in § 405.1314(a) and the quality control requirements specified in § 405.1317.

Physical Environment

We are proposing to consolidate all of the disparate sections of the regulations dealing with the physical plant of the facility, while retaining the essential client protection and living environment features of the existing standards. We would revise many of the requirements, recognizing the many types of facilities operating in the ICF/MR program. We propose to revise the regulations regarding the physical environment as follows:

1. Living Environment: We would continue to require that clients be housed appropriately, according to age, development and social needs. We also would continue to prohibit the segregation of residents based on physical handicap. (See proposed § 442.500.)

2. Bedrooms: We would revise the standard on client bedrooms to require floor to ceiling walls in newly certified facilities. The exception for existing facilities is necessary because many facilities have partial walls. To complete these walls would be expensive, especially when one considers possible modifications to ventilating systems. We would also revise the standard to allow bedrooms to be below ground level under certain circumstances. We would continue the prohibition against more than four clients to a bedroom unless a variance is granted. We would clarify the conditions for granting such a variance to indicate that a variance may be granted only when clients are so health-impaired as to require constant supervision. The variance was never intended to justify the continued use of open wards. We would continue to require that the facility provide each client with a separate bed and appropriate bedding and furniture. (See proposed § 442.502)

3. Storage Space: We would require that clients have adequate space for equipment and suitable storage space for personal possessions, including clothing. (See proposed § 442.504.)

4. Bathrooms: We would require that bathrooms provide adequate toilet and bathing facilities and provide for individual privacy. We would also require that if clients have not been trained to regulate water temperature, the temperature of the water not exceed 110° Fahrenheit. (See proposed § 442.506.)

5. Heating and Ventilation: We would retain the provision requiring each bedroom to have at least one window and direct outside ventilation. We would also require the facility to maintain the temperature and humidity within a normal range and ensure that the heating apparatus is not a burn or smoke hazard to clients. (See proposed § 442.508.)

6. Floors: We would retain the provision that the floors have either a resilient nonabrasive, nonslip surface or nonabrasive carpeting in units where clients crawl. (See proposed § 442.510.)

7. Space and Equipment: We are proposing to consolidate several existing standards and create a new standard to require that the facility provide sufficient space and equipment in dining, health services, and program areas to enable staff to provide clients with needed services. We would also require the facility to furnish, maintain, and encourage the use of dentures, eyeglasses, hearing aids, and other devices required by the client. (See proposed § 442.512.)

Safety and Sanitation

Current regulations at 42 CFR 442.505 to 442.512 set forth requirements for various aspects of safety and sanitation. We propose to revise these standards as follows:

1. Emergency Plans: We would require that the facility have detailed written plans and procedures to meet all potential emergencies and that the plan be available to all staff. We have eliminated the requirement that these procedures be posted, since we do not believe that posting is as useful as ensuring that staff are adequately trained. (See proposed § 442.550.)

2. Evacuation Drills: We have revised the standard on evacuation drills to stress the participation of those individuals capable both physically and mentally of cooperating in their own evacuation from a building. Thus, we would emphasize the importance of training those clients able to do so, to respond in their own behalf to an emergency. We would revise the rules to require facilities to hold drills at least quarterly for each shift of personnel (assuming three shifts, this amounts to 12 drills per year) and to actually evacuate those clients who can cooperate during each of these drills. For those clients who cannot cooperate, we would require actual evacuation during at least one drill a year on each shift (assuming three shifts, this amounts to three drills per year). (See proposed § 442.552.)

3. Fire Protection: Because we have proposed revisions to the current regulations on fire protection in a separate regulations document, "Fire Safety Standards for ICFs/MR" (see 50 FR 45921, November 5, 1985, for details on the proposal), we have not addressed them here. We would, however, reserve § 442.554 for the placement of the fire protection standards after the proposal is finalized.

4. Paint: We would retain the requirement that the facility use lead-free paint and remove or cover old paint or plaster containing lead. (See proposed § 442.556.)

5. Building Accessibility: ICF/MR programs must be accessible to the handicapped. By requiring compliance with civil rights laws (see § 442.416 of the proposed regulations), we propose that the facility meet Department-wide regulations establishing accessibility standards for all recipients of federal financial assistance. It should be noted that under these standards each facility need not necessarily make structural changes but they must make their programs and activities, when viewed as a whole, readily accessible to handicapped persons.

Food and Nutrition Service

Food and nutrition requirements are addressed in current regulations at 42 CFR 442.465 to 442.471. These standards are directed toward large facilities that operate their own institutional food services. We would revise the regulations to change many of the requirements that are not applicable for the smaller group homes that operate their own kitchens. We would revise the regulations as follows:

1. Diet: We would require that the facility provide each client with a diet prepared in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (See proposed § 442.558.)

2. Meal Service: We would retain the standard on meal services that requires the facility to serve at least three meals a day at regular times, at the appropriate temperature, form (e.g., pureed, ground, chopped) and with the proper utensils. (See proposed § 442.560.)

3. Menus: We would continue to require that menus be prepared in advance, be different for the same days of each week, be adjusted for seasonal changes, be kept on file for 30 days and include the average portion sizes for menu items. We would eliminate the requirement that the facility keep a record of food that is purchased because this burdensome requirement does not assure that clients achieve adequate diets or that they receive adequate nutrition. (See proposed § 442.562.)

4. Dining Areas: We would continue to require that facilities serve meals in dining areas, provide table service for all clients who can and will eat at a table, and equip areas with appropriate tables, chairs, utensils and dishes. (See proposed § 442.564.)

C. Other Proposed Revisions

1. Active Treatment

Current regulations at 42 CFR 435.1009 contain the definition of "active treatment". We propose to revise this definition to bring it into conformance with the revisions we are proposing to the active treatment section in the standards. The revised definition would clarify that the active treatment program is directed toward either the acquisition of the skills necessary for the client's maximum possible development, or the prevention of regression or loss of the client's current functional status.

2. Exemption From Certain Nursing Home Standards

Current regulations at 42 CFR 442.252 specify that an ICF must meet State requirements for nursing home safety and sanitation. Many ICFs/MR have found the standard at § 442.502 to be in conflict with the nature of an ICF/MR, particularly in small facilities. Examples of these nursing home requirements are a nurse call system and a licensed nursing home administrator. We are proposing to revise this section of the regulations by exempting ICFs/MR from this requirement. We would continue to require that the ICF/MR be in compliance with all applicable Federal, State and local laws, regulations and codes, such as health, safety, sanitation, research, and civil rights laws and accessibility laws for the handicapped. (See proposed § 442.416.)

III. Regulatory Impact Statement

Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual economic impact of $100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the Order.

As noted elsewhere in the preamble, we are proposing to revise the ICF/MR standards with the twofold purpose of: (1) Ensuring that clients are provided quality care; and (2) relieving facilities of the duplicative requirements contained in the current regulations and thus reducing their operating costs. As the focus shifts from the institution to the client, we believe that because of these proposed changes, State surveyors will be in a better position to determine whether active treatment is actually occurring for each client. This determination is important to ensure that those who work with clients deliver accountable, habilitative services that result in the client's growth and

development and that result in more effective expenditure of Medicaid dollars in the ICF/MR setting.

While we believe that the regulation would accomplish these results, for several reasons we are not able to determine the economic impact. First, current cost reporting requirements do not provide data broken down by cost centers that would allow us to determine the extent of our present or future expenditures. Second, ascribing cost of care is difficult because of the variations among facilities in terms of facility size and type, and diversity in per diem rates within a State. Third, the variety of client characteristics makes it difficult to ascribe costs of care based on these characteristics.

In conclusion, even though we can not develop a precise estimate, our best available data indicate that the economic impact of this regulation would not exceed $100 million, nor would it meet the other thresholds specified in the Executive Order. Therefore, we have not prepared a regulatory impact analysis. We also believe that these proposed regulations would maximize net benefits by reducing facility operating costs, ensuring more administrative flexibility, and reducing paperwork burden. Clients should benefit from the stronger focus on definable outcomes related to the care provided to them.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act, we prepare and publish a regulatory flexibility analysis for any regulation that is likely to have a significant impact on a substantial number of small entities. A small entity is a small business, a nonprofit enterprise, or a government jurisdiction with a population of less than 50,000. The purpose of the analysis would be to anticipate the potential impact and to seek alternatives that would have a less significant effect.

As of September 9, 1985, there are about 2,911 certified ICFs/MR ranging in size from 4 to more than 1500 beds. The composition of these ICFs/MR is as follows:

Number of beds	Number of ICFs/MR	Percent of total
4-16	2,078	71
17-50	322	11
51-100	220	7
101-300	166	5
301-500	48	1
501-750	47	1
751-	30	1

Public ICFs/MR comprise about 31 percent of certified ICFs/MR and private facilities represent the remaining 69 percent.

We believe that all of these facilities would benefit by the new standards because of the reduced paperwork burdens and costs, and the increased administrative flexibility provided to facilities in the proposal. We also expect that some individual facilities may be significantly affected by these proposals. For example, we understand that the public ICFs/MR currently commit as much as 20 percent of their fiscal and staff resources to the preparation of paperwork under the present standards (as estimated by the National Association of Superintendents of Public Residential Facilities for the Mentally Retarded). While some of this paperwork is legally and programmatically necessary and important, much of it is performed only to meet specific and discrete requirements specified in current regulations. The proposed regulations' emphasis on staff and client performance rather than paper compliance, could reduce the production of paper by a third in these facilities. However, State licensing requirements and internal facility policies and practices would also affect the extent of real savings which could occur under these standards by retaining some of the same requirements.

We believe that facilities with fewer than 16 beds would be affected less significantly by our new standards because these facilities are now subject to interpretive guidelines especially designed for surveying small facilities. While these facilities would benefit from reduced paperwork and increased focus on client outcomes, because of their size, they typically experience fewer of the administrative and programmatic problems in delivering and accounting for services to clients which result from the prescriptive, generally inflexible standards contained in the current regulations.

Other provisions which may significantly impact individual facilities include:

1. *Physician services*—We are proposing to allow physician assistants (PAs) and nurse practitioners (NPs) to perform physician functions to the extent allowed by State law. We anticipate that this provision could result in significant savings for those facilities that can use PAs and NPs for routine health care.

2. *Nursing services*—For those facilities that serve 15 or fewer persons who do not now require professional nursing services, the proposed standards would result in the necessity to arrange for nursing personnel to conduct an in-person health review of each client *at least* quarterly. This could represent an increased cost over present requirements for affected facilities, although we cannot determine whether these costs would be significant to these affected facilities because we cannot calculate the expected offset in savings that would occur under these standards. However, this requirement would be balanced by a decrease in costs because facilities that serve 16 or more clients, none of whom have a medical care plan ordered by a physician, would not need a licensed nurse on duty.

3. *Staff to client ratios*—We are proposing to revise the method used in determining staff to client ratios. Instead of counting total employees, we would count numbers of employees on duty during a 24-hour period. We believe that this would provide a more accurate measure of manpower actually spent caring for clients. It should not have a significant impact on facility staffing levels because the proposed ratios were derived from current ratios factoring out the estimated numbers of employees not actually on duty at a given time. It also reflects surveyor guideline practices that have been used since the beginning of the program.

4. *Dental services*—Our proposed standards would require that each client's dental needs be addressed, including dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health. Current standards require comprehensive dental treatment including emergency care and annual check-ups. We believe that our proposed language makes explicit that which was always intended in the current standards, namely that the client's dental care needs be met. Whether this proposal represents an increase in cost to affected facilities depends on the extent to which they are meeting existing standards as we intended them to be applied.

5. *Client bedrooms (floor to ceiling walls)*—We are proposing to require, for newly certified facilities, that walls must extend from the floor to the ceiling between living quarters. Clients would benefit by increased privacy and a slight degree of increased safety by the containment of possible spreading fires. The economic impact of this requirement would be negligible because there are very few new facilities coming into the program that do not already meet this requirement.

6. *Client bedrooms (variance to the four-to-a-bedroom rule)*—Our proposal limits the conditions under which a facility can claim a variance to our long-

standing rule that no more than four persons may be allowed per bedroom. We would limit this arrangement to clients with severe health problems that require continuous monitoring during sleeping hours. For those facilities that have relied on this variance in existing standards, this new provision may represent significant increased capital expenditures, or the buildings affected could face the loss of certification in the ICF/MR program. We believe that the existing provision allowing for more than four persons per bedroom was never intended to serve as a vehicle for the perpetuation of open ward housing arrangements for clients who could successfully live in more private space. Thus, this proposal actually supports those States and facilities that have committed the necessary resources to comply with the intent of the original standards. This provision would not affect most ICFs/MR with fewer than 16 beds because they typically use housing with normal size bedrooms and usually house fewer than four persons per bedroom.

7. *Evacuation drills*—We are proposing to revise the requirement for evacuation drills to focus more attention on the mobility and responsiveness of various clients to a possible life-threatening situation. We believe that the proposed change will have no economic impact.

8. *Laboratory services*—We are also proposing certain health and safety standards for those ICFs/MR that choose to provide in-house laboratory services (ICFs/MR that have arrangements with independent laboratories may contract only with laboratories that meet the requirements for participation in Medicare (42 CFR 440.30)). We have identified 110 public (but no private) ICFs/MR that currently use in-house labs. Of this total, only 38 are currently State licensed. We are proposing that the remaining unlicensed facilities meet the requirements of proposed § 442.489, unless they become State licensed.

The requirements detailed in proposed § 442.489(c), (d), (e) and (f) are basically standard norms for laboratories and should not impose any additional requirements beyond these accepted standards. Further, as most of these laboratories are now operating near the level of those provisions, they should, again, not incur great costs in complying with our requirements.

We believe that any costs incurred by affected ICFs/MR would be offset by the health and safety benefits inherent in these provisions. As a result of a recent survey, we have determined that although laboratory services are incorporated in facilities' per diem rates, in most instances there was no quality control over these services. Including these laboratory requirements would allow State surveyors and Federal authorities to monitor the quality of this vital service in those ICFs/MR that choose to provide laboratory services. Quality control is especially important in larger, public ICFs/MR, which now house the most severely handicapped clients. These facilities use laboratory services extensively and routinely for drug levels, fluid analyses, tissue and waste analyses, and for infection control. Thus, we believe that all ICF/MR clients will benefit from the incremental improvements in the services received from their laboratories.

The actual impact on an individual ICF/MR would represent the extent of the incremental difference between a facility's current level of compliance with our regulations and the effort and cost, if any, required to meet these proposed revisions. Overall, we believe that most facilities will be able to improve performance at lower cost. As explained above, smaller facilities already have substantial flexibility so that the net gain is not expected to be substantial for most of these facilities. Nonetheless, we expect that many smaller facilities will be affected both significantly and beneficially.

In our view, the Regulatory Flexibility Act does not require an analysis unless the impact is adverse. However, because of this significant beneficial impact, we have voluntarily prepared the analysis above, which, when taken together with the remainder of the preamble, constitutes a regulatory flexibility analysis

Paperwork Reduction Act of 1980

Sections 442.410 (a) and (b), 442.418(b)(1), 442.432 (a), (e) and (f), 442.436(c), 442.442 (b)(2)(i), (c)(1) and (c)(3), 442.444 (a), (c), (d) and (e), 442.446 (c) and (d), 442.448 (a) and (b), 442.450(d), 442.452(a), 442.454 (a) and (b), 442.456(b), 442.468(b), 442.478 (a), (b) and (c), 442.482 (b), (c) and (d), 442.484(i), 442.486 (c) and (d), 442.489(d)(2), 442.502(c)(2), 442.550(a), 442.552(b)(4) and 442.562 contain information collection requirements which require approval from the Office of Management and Budget under the Paperwork Reduction Act of 1980. We have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, (Room 3208), Washington, DC 20503, Attn: Fay Iudicello.

IV. Response to Comments

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule.

List of Subjects

42 CFR Part 435

Aid to families with dependent children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting and recordkeeping requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 442

Certification of intermediate care facilities (ICFs), Certification of skilled nursing facilities (SNFs), Contracts (Agreements), Disabled, Grant-in-Aid program—health, Health facilities, Health professions, Health records, Information (Disclosure), Medicaid, Mental health centers, Nursing homes, Nutrition, Privacy, Safety.

42 CFR Chapter IV would be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

A. Section 435.1009 is amended by revising the definition of "active treatment in intermediate care facilities for the mentally retarded" to read as follows:

§ 435.1009 Definitions relating to institutional status.

For purposes of FFP, the following definitions apply:

"Active treatment in intermediate care facilities for the mentally retarded" requires the following:

(a) The provision of an active treatment program for each client that is directed toward—

(1) The acquisition of developmental, behavioral, and social skills necessary for the client's maximum possible individual independence; or

(2) For dependent clients where no further positive growth is reasonably considered possible, the prevention of regression or loss of current optimal functional status.

(b) Active treatment does not include the maintenance of generally independent clients who are able to function with little supervision or who require few if any of the significant active treatment services described in 42 CFR Part 442.

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PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

B. Part 442 is amended as set forth below:

1. The table of contents for Subpart G and the authority citation for Part 442 are revised to read as follows:

Subpart G—Standards for Intermediate Care Facilities for the Mentally Retarded

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

Subpart E—Intermediate Care Facility Requirements; All Facilities

2. Subpart E is amended by revising § 442.252 to read as follows:

§ 442.252 State safety and sanitation standards.

An ICF other than an ICF/MR must meet State safety and sanitation standards for nursing homes.

3. Subpart G is revised to read as follows:

Subpart G—Standards for Intermediate Care Facilities for the Mentally Retarded

§ 442.400 Basis and purpose.

This subpart implements section 1905 (c) and (d) of the Act which gives the Secretary authority to prescribe standards for intermediate care facility services in facilities for the mentally retarded or persons with related conditions.

§ 442.401 Protection of clients' rights.

The facility must ensure the rights of all clients. Therefore, the facility must—

(a) Inform each client, parent (if the client is a minor), or guardian (if applicable), of the client's rights and the rules of the facility;

(b) Inform each client, parent or guardian of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(c) Allow and encourage each client to exercise his or her rights as a client of the facility, and as a citizen of the United States, including the right to file complaints;

(d) Allow each client to manage his or her financial affairs and teach him or her to do so to the extent of the client's capabilities;

(e) Ensure that clients are not subjected to physical or psychological abuse;

(f) Ensure that clients are free from unnecessary drugs and physical restraints and are provided habilitation to reduce dependency on drugs and physical restraints;

(g) Provide each client with the opportunity for personal privacy;

(h) Ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts;

(i) Permit clients to communicate, associate and meet privately with individuals of their choice, and to send and receive mail;

(j) Permit clients to participate in social, religious, and community group activities; and

(k) Permit clients to retain and use personal possessions and appropriate clothing, and ensure that each client is dressed in his or her own clothing each day unless confined to bed by a physician.

Administrative Services

§ 442.410 Client finances.

The facility must establish and maintain a system that assures a full and complete accounting of the clients' personal funds.

(a) The system must include the use of a separate account for funds to preclude any commingling of client funds with facility funds or with the funds of any person other than another client.

(b) The facility must maintain a current, written financial record for each client that includes the management of all funds handled by the facility on behalf of the client.

(c) The financial record must be available on request to the client and his or her parents or guardian.

§ 442.412 Governing body.

The facility must identify an individual or individuals to constitute the governing body of the facility. The governing body must—

(a) Exercise general policy, budget, and operating direction over the facility;

(b) Set the qualifications (in addition to those already set by State law, if any) for the administrator of the facility, which must include knowledge in the field of developmental disabilities; and

(c) Appoint the administrator of the facility.

§ 442.414 Communications with clients, parents, and guardians.

The facility must have an active program of communication with the client, parents, and guardian. The facility must—

(a) Permit participation of parents and guardians in the client's active treatment process specified in § 442.440 unless their participation is unobtainable or inappropriate;

(b) Answer communications from clients' families and friends promptly and appropriately;

(c) Permit individuals with a relationship to the client (such as family, close friends, and advocates) to visit at any reasonable hour, without prior notice, unless and interdisciplinary team determines that this would not be appropriate;

(d) Permit parents or guardians to visit any area of the facility that provides direct client care services to the client; and

(e) Permit frequent and informal leaves from the facility for visits, trips, or vacations.

§ 442.416 Compliance with Federal, State, and local laws.

The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, sanitation, research and civil rights.

§ 442.418 Provision of needed services.

(a) *Services provided directly.* At a minimum, the following must be provided directly by the facility:

(1) The services of a qualified mental retardation professional.

(2) The services of direct care staff.

(3) The development and monitoring of active treatment programs.

(4) Nursing services for clients with medical care plans.

(5) Living quarters as specified in §§ 442.500 through 442.512, which set forth the standards for the physical environment of an ICF/MR.

(b) *Services provided through outside arrangements.* (1) If a service required under this subpart is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must—

(i) Contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and

(ii) Assure that the outside services meet the standards for quality of services contained in this subpart.

(3) The facility must assure that the quality of outside services meets the needs of each client.

§ 442.420 Personnel policies.

The facility must—

(a) Develop and implement personnel policies that are available to all employees;

(b) Make job descriptions available for all positions; and

(c) Prohibit employees with symptoms or signs of a communicable disease from working; and

(d) Prohibit the employment of individuals with a history of child or client abuse, neglect or exploitation.

§ 442.422 Licensure and professional standards.

The facility must require compliance with the same licensure or certification standards for positions in the facility as are required for comparable positions in community practice.

§ 442.424 Staff treatment of clients.

(a) The facility must develop and implement policies and procedures that prohibit mistreatment, neglect or abuse of the client by an employee of the facility.

(b) The facility must ensure that all alleged violations of policies are reported immediately through established procedures.

(c) The facility must have evidence that—

(1) It investigates thoroughly all alleged violations;

(2) The results of the investigation are reported to the administrator or his designated representative within 5 working days of the incident; and

(3) If the alleged violation is verified, the administrator takes appropriate corrective action.

§ 442.426 Facility staffing.

(a) The facility must not depend upon clients or volunteers to perform direct care services for the facility.

(b) Direct care staff must not be required to provide housekeeping, laundry or other support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(c) In each defined residential living unit housing clients for whom a physician has ordered a medical care plan, or clients who are aggressive, assaultive or security risks, or one that houses more than 16 persons, there must be responsible direct care staff on duty and awake when clients are present to take prompt, appropriate action in case of injury, illness, fire or other emergency.

(d) In each defined residential living unit housing clients for whom a physician has not ordered a medical care plan and that houses 16 or fewer clients, there must be a responsible direct care staff person immediately accessible to clients on a 24 hour basis (when clients are present) to respond to injuries and symptoms of illness, and to handle emergencies.

(e) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(f) The facility must employ a qualified dietitian who is registered or eligible for registration by the American Dietetics Association either full-time, part-time, or on a consultant basis.

(g) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

§ 442.428 Direct care (residential living unit) staff.

Direct care staff are defined as the present on-duty staff-per-clients calculated over all shifts in a 24 hour period for each defined residential living unit. Direct care staff must be provided by the facility in the following minimal ratios:

(a) For each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, severely physically handicapped clients, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2.

(b) For each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4.

(c) For each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4.

§ 442.430 Staff training program.

(a) The facility must provide each employee with initial and continuing

training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(b) For employees who work with clients, training must focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(c) Staff must be able to demonstrate skills and techniques necessary to implement the individual program plans for each client under their care.

§ 442.432 Client records.

(a) The facility must develop and maintain a recordkeeping system that includes a separate record for each client, and that documents the client's health care, active treatment, social information, and protection of the client's rights.

(b) The facility must keep confidential all information contained in the clients' records, regardless of the form or storage method of the records.

(c) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client, or his or her parents or legal guardian.

(d) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(e) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(f) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

§ 442.434 Emergencies or death of a client.

The facility must notify promptly the client's parents or guardian of any significant incidents, including serious illness, accident or death, and autopsy findings if requested.

§ 442.436 Infection control.

(a) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be an active program for the prevention, control, and investigation of infection and communicable diseases.

(b) The facility must implement successful corrective action in affected problem areas.

(c) The facility must maintain a log of incidents and corrective actions related to infections.

Active Treatment Services

§ 442.440 Active treatment.

(a) The facility must provide an active treatment program for each client that is directed toward—

(1) The acquisition of developmental, behavioral, and social skills necessary for the client's maximum possible individual independence; or

(2) For dependent clients where no further positive growth is demonstrable, the prevention of regression or loss of current optimal functional status.

(b) Active treatment does not include the maintenance of generally independent clients who are able to function with little supervision or who require few if any of the significant active treatment services described in these standards.

§ 442.442 Admissions, transfers, and discharge.

(a) The facility must admit only those individuals who are in need of active treatment services as described in this subpart and for whom the facility can provide needed services.

(b) Admission decisions must be made by an interdisciplinary team, based on a comprehensive evaluation of the client that is conducted or updated by the facility or made by outside sources.

(1) A comprehensive evaluation must contain background information and a comprehensive functional assessment of current developmental, behavioral, social and health status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(2) A preadmission evaluation must be completed or updated no more than 90 days before the date of admission.

(3) At the time of admission, a physician must participate in the establishment of the client's individual program plan as required by § 456.380 of this chapter that specifies plan of care requirements for ICFs.

(c) If a client is to be either transferred or discharged, the facility must—

(1) Have documentation in the client's record that the client was transferred or discharged for good cause;

(2) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies);

(3) Provide a final summary of the client's developmental, behavioral, social, and health status at the time of the discharge that is available for release to authorized persons and agencies, with the consent of the client, parents or guardian; and

(4) Provide a post-discharge plan of care that will assist the client to adjust to his or her new living environment.

§ 442.444 Individual program plan.

(a) The facility must develop an individual program plan (IPP) for each client. An interdisciplinary team representing the professions, disciplines, or service areas that are relevant to each client's needs, as identified by comprehensive functional assessments described in § 442.442(b), must be used to develop the plan.

(b) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies involved in serving the client is encouraged. Participation by the client or the client's parents or guardian is required unless their participation is unobtainable or inappropriate.

(c) Within 30 days after admission, the interdisciplinary team must perform assessments or re-assessments as needed to supplement pre-admission data. The assessment must—

(1) Identify the presenting problems and disabilities and, where possible, their causes;

(2) Identify the client's specific developmental strengths;

(3) Identify the client's developmental and behavioral management needs;

(4) Identify the client's need for services without regard to the actual availability of the services needed; and

(5) Include, as applicable, physical development and health, sensorimotor development, affective development, speech and language development and auditory functioning, cognitive development, vocational skills and adaptive behaviors or independent-living skills necessary for the client to be able to function in the community.

(d) Within 30 days after admission, the interdisciplinary team must prepare, for each client, an IPP that states specific objectives for individual needs. These objectives must—

(1) Be stated separately, in terms of a single behavioral outcome;

(2) Be assigned projected completion dates;

(3) Be expressed in behavioral terms that provide measurable indices of performance;

(4) Be organized to reflect a developmental progression appropriate to the individual;

(5) Be assigned priorities; and

(6) Include the programs and strategies to be used.

(e) The IPP must emphasize personal care skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, and grooming), until the client has acquired these skills or it has been demonstrated that he or she is developmentally incapable of acquiring them.

(f) The IPP must provide that multi-handicapped and non-ambulatory

clients spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

(g) A copy of each client's IPP must be made available to all relevant staff, including staffs of other agencies who work with the client, and to the client's parents or guardian.

§ 442.446 Program implementation.

(a) As soon as the interdisciplinary team has formulated a client's IPP, the facility must implement a continuous active treatment program for each client.

(b) The program must consist of needed interventions and services in sufficient number and frequency to carry out the objectives identified in the IPP.

(c) The facility must develop an active treatment schedule that outlines the active treatment program and is attached to and distributed with the IPP.

(d) Each client's IPP must be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

§ 442.448 Program documentation.

(a) The facility must document, in measurable terms, the client's performance in relationship to the objectives contained in the IPP.

(b) The facility must document that significant developmental, behavioral and social objectives identified in the client's IPP have taken place.

§ 442.450 Program monitoring and change.

(a) Each client's active treatment program must be integrated, coordinated and monitored by an qualified mental retardation professional who—

(1) Is employed by the facility;

(2) Has at least one year of experience working directly with persons with mental retardation or other developmental disability; and

(3) Is one of the following:

(i) A physician.

(ii) A registered nurse.

(iii) An individual who holds at least a bachelor's degree in a professional category included in § 442.460.

(b) A client's active treatment program must be reviewed and revised as necessary, if—

(1) The client has successfully completed an objective or objectives identified in the IPP;

(2) The client is regressing or losing skills already gained; or

(3) The client is failing to progress toward identified objectives after reasonable efforts have been made.

(c) The facility must develop procedures for revising plans between regularly scheduled reviews that include at least—

(1) Participation of and approval by the interdisciplinary team for any changes in the individual objectives of a client's IPP; and

(2) Approval of changes in implementation strategies for objectives by the qualified mental retardation professional and a professional member of the interdisciplinary team associated with the area of planned change.

(d) At least annually, the facility must reassess and revise the IPP, repeating the process set forth in § 442.444.

(e) The facility must establish and use a specially constituted committee or committees consisting of members from facility staff, parents, clients (if possible), and persons with no ownership or control interest in the facility, to—

(1) Review, approve, and monitor those individual behavior management and other programs that, in the opinion of the committee, involve risks to client protections; and

(2) Review, monitor and make suggestions about facility practices and programs as they relate to drug usage, physical restraints, behavior modification programs, protection of client rights and funds, and any other areas that the committee feels need to be addressed.

(f) The provisions of paragraph (e) of this section may be modified only if, in the judgment of the survey agency, State law or regulations provide for equivalent client protection and consultation.

§ 442.452 Behavior management—policies and procedures.

(a) The facility must have written policies and procedures for the behavioral management of clients. Those policies and procedures must be available to and implemented by all staff, and be available to parents, guardians, and if possible, clients.

(b) To the extent possible, clients must participate in the formulation of behavior management policies and procedures.

(c) Staff of the facility must not use corporal punishment, or verbal, physical, or sexual abuse.

(d) Staff must not place a client unobserved in a room or other area from which egress is prevented except as part of a systematic time-out program that meets all applicable standards.

(e) Clients must not discipline other clients, except as part of an organized self-government that is conducted in accordance with the behavior management policies and procedures specified in paragraph (a) of this section.

(f) Staff must not punish a client by withholding food that contributes to a nutritionally adequate diet.

§ 442.454 Behavior modification programs.

(a) The facility must formulate and implement written policies and procedures that govern the use of behavior modification programs, specify the staff members who may authorize their use, and describe a mechanism for monitoring and controlling their use.

(b) Each written behavior modification program (including aversive techniques), physical restraint program, and program for the use of drugs for behavior modification purposes must be a part of each client's IPP and specify—

(1) The behavioral objectives of the program;

(2) The methods to be used;

(3) The schedule for the use of the method;

(4) The persons responsible for the program; and

(5) The data to be collected to assess progress toward the desired objectives.

(c) For purposes of this subpart, a "time out" device is a procedure designed to improve behavior by placing the client where there is no opportunity for positive reinforcement of his or her undesirable behavior.

(d) Removal from a situation for time-out purposes must not be for longer than one hour, except in extraordinary instances that are approved by a professional member of the client's interdisciplinary team.

(e) Each behavior modification program that involves the use of aversive conditioning or time-out devices must be—

(1) Approved in writing by the facility's review committee, as required by § 442.450(e); and

(2) Conducted only with the written consent of the client or his or her parents or legal guardian, if available.

(f) Except in response to emergency situations, less restrictive methods of behavior management must be attempted and documented to have failed before more restrictive methods are employed.

§ 442.456 Physical restraints.

(a) The facility may employ physical restraint only—

(1) As a time out device that is an integral part of an IPP and that is intended to lead to less restrictive means of managing and eliminating the bahavior for which the restraint is applied; or

(2) As an emergency measure, but only if absolutely necessary to protect the client or others from injury.

(b) The facility must have written policies and procedures that define the use of restraints, the staff members who may authorize their use, and a mechanism for monitoring and controlling their use.

(c) Written authorization for restraints not used as part of an integrated behavior modification program must not be in effect longer than 12 consecutive hours.

(d) The facility must not issue orders for restraints on a standing or as needed basis.

(e) An individual placed in restraint must be checked at least every thirty minutes by staff trained in the use of restraints and a record of these checks must be kept.

(f) Restraints must be designed and used so as not to cause physical injury to the individual and so as to cause the least possible discomfort.

(g) The facility must not employ physical restraints as punishment, for the convenience of staff, or as a substitute for an active treatment program.

(h) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hours in which restraint is employed, and a record of such activity must be kept.

(i) Totally enclosed cribs are considered restraints and their use must be governed by the standards in this section.

(j) Barred enclosures other than cribs must not be more than three feet in height and must not have tops.

(k) A physical restraint used as a time-out device must be used only during behavior modification exercises and only in the presence of staff trained to implement the program.

§ 442.458 Drug usage.

(a) The facility must not use drugs as a punishment, for the convenience of staff, as a substitute for an active treatment program, or in doses that interfere with an individual's IPP.

(b) Drugs used for behavior management must be used only as an integral part of the client's IPP that is directed toward the reduction of, and eventual elimination of, the behaviors for which the drugs are employed.

§ 442.460 Professional program services.

(a) The facility must provide professional program services to implement the active treatment program defined by each client's IPP. Professional program staff must work directly with the clients and with other professionals and the paraprofessional and nonprofessional staffs who work with clients.

(b) The facility must have available enough qualified professional staff and support personnel to carry out the various professional services in accordance with the stated goals and objectives of every IPP.

(c) Professional program staff must participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(d) Professional program staff must participate in on-going staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

(e) Professional program staff must meet the following qualifications:

(1) An occupational therapist must be—

(i) Eligible for certification as an occupational therapist by the American Occupational Therapy Association; or

(ii) A graduate of an occupational therapist educational program accredited jointly by the American Occupational Therapy Association and the committee on Allied Health Education and Accreditation of the American Medical Association.

(2) An occupational therapy assistant must be—

(i) Eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association; or

(ii) A graduate of an occupational therapy assistant program accredited by the American Occupational Therapy Association.

(3) A physical therapist must be licensed as a physical therapist by the State in which he or she practices.

(4) A physical therapy assistant must be a graduate of a two year college-level program approved by the American Physical Therapy Association.

(5) A psychologist must have at least a master's degree in psychology from an accredited program.

(6) A social worker must—

(i) Be licensed, if applicable, by the State in which he or she is practicing;

(ii) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education; or

(iii) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education.

(7) A speech and language pathologist or audiologist must be licensed, if applicable, by the State in which he or she is practicing and—

(i) Be eligible for a certificate of clinical competence in speech and language pathology or audiology granted by the American Speech, Language, and Hearing Association under its requirements in effect on the publication of this provision; or

(ii) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

(8) A professional recreation staff member must have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education, or recreation therapy.

(9) A human services professional must have at least a bachelor's degree in a human services field other than those mentioned in paragraphs (e)(1) through (e)(8) of this section (such as sociology, special education, rehabilitation counseling).

§ 442.462 Physician services.

(a) The facility must provide or arrange for the provision of physician services 24 hours a day, including treatment, medications, diet, and any other medical service prescribed or planned for the client.

(b) To the extent permitted by State law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section.

§ 442.464 Physician participation.

(a) A physician must participate in—

(1) The establishment of the newly admitted client's IPP as required by § 456.380 of this chapter that specifies plan of care requirements for ICFs; and

(2) The development of a medical care plan of treatment (i.e., a formalized plan for the provision of physician and related medical care services) for a client if the physician determines that an individual client requires such a plan for the medical management of specific serious health problems. This plan must be integrated in the overall IPP, as appropriate.

(b) If appropriate, physicians must participate in the review and update of an IPP as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

§ 442.466 Comprehensive health services.

The facility must—

(a) Have a formal arrangement for providing each client with medical care that includes care for medical emergencies on a 24 hours a day basis as well as general preventive health services; and

(b) Provide annual physical examinations that include the following:

(1) Examination of vision and hearing.

(2) Routine immunizations and tuberculosis control.

(3) Screening laboratory examinations as determined necessary by the physician, and special studies, if needed.

§ 442.468 Nursing services.

The facility must provide clients with nursing services in accordance with their needs. These services must include—

(a) The development, review, and update of an IPP as part of the interdisciplinary team process;

(b) The development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(c) A determination of clients' health status by an onsite, direct physical review at least quarterly of those residents certified by a physician as not in need of a medical care plan of treatment. Based on the nurse's recorded findings, the nurse must take necessary action (including referral to a physician if necessary) to address the health problems of clients;

(d) Other nursing care as prescribed by the physician or as identified by client needs; and

(e) Implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include, but are not limited to—

(1) Training clients and staff as needed in appropriate health and hygiene methods;

(2) Control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(3) Training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

§ 442.470 Nursing staff

(a) Nurses providing services in the facility must have a current license to practice in the State.

(b) The facility must have available enough nursing staff and other support personnel to carry out the various nursing services.

(c) The facility must employ a licensed nurse on one full shift 7 days a week to supervise the health services for clients for whom the physician has ordered a medical care plan.

(d) In facilities with clients who have been determined by the physician not to require a medical care plan, the facility must arrange for licensed nursing personnel to conduct health surveillance of each client on a quarterly basis.

(e) The facility must utilize registered nurses as appropriate and required by State law to perform the health services specified in this section.

(f) If the facility utilizes only licensed practical or vocational nurses to provide health services, it must have a formal arrangement with a registered nurse to consult with the licensed practical or vocational nurses.

(g) Non-licensed personnel who work with clients under a medical care plan must do so under the supervision of licensed persons.

§ 442.472 Dental services.

(a) The facility must provide or make arrangements for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement.

(b) Dental professionals must participate, as appropriate, in the development, review and update of an IPP as part of the interdisciplinary process.

§ 442.474 Comprehensive dental diagnostic services.

Comprehensive dental diagnostic services included—

(a) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within 6 months before admission);

(b) Periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(c) A review of the results of examination and entry of the results in the client's dental record.

§ 442.476 Comprehensive dental treatment.

Comprehensive dental treatment services include—

(a) Provision of emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(b) Dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

§ 442.478 Documentation.

(a) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(b) If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintained in the client's living unit.

(c) The facility must provide a copy of the dental record (if available) or the most recent dental summary to the client, his parents, or guardian upon discharge from the facility.

§ 442.480 Pharmacy services.

The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

§ 442.482 Drug regimen review.

[a] A pharmacist or registered nurse must review the drug regimen of each client at least quarterly.

(b) The pharmacist or nurse must report any irregularities in clients' drug regimens to the prescribing physician.

(c) The pharmacist or nurse must prepare a record of each client's drug regimen reviews and the facility must maintain that record.

(d) An individual medication administration record must be maintained for each client.

(e) The pharmacist must participate, as appropriate, in the development, implementation, and review of each client's IPP.

§ 442.484 Drug administration.

The facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that—

(a) All drugs are administered in compliance with the physician's orders;

(b) All drugs are administered without error, including those that are self-administered;

(c) If unlicensed personnel are allowed by State law to administer drugs, a licensed nurse participates in the training of these personnel in facility-specific drug administration procedures apart from and in addition to any State program;

(d) Clients are taught how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective, and if the physician does not specify otherwise;

(e) The client's physician is informed of the interdisciplinary team's decision

that self-administration of medications is an objective for the client;

(f) No client self-administers medications until he or she demonstrates the competency to do so;

(g) Drugs used by clients while not under the direct care of the facility are packaged and labeled by a pharmacist;

(h) There is an automatic stop order for those drugs not limited by the prescription in time or quantity; and

(i) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician or registered nurse.

§ 442.486 Storage and recordkeeping.

(a) The facility must store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(b) The facility must keep all drugs and biologicals locked except when being prepared for administration. Only authorized personnel may have access to the keys to the drug storage area.

(c) The facility must maintain records of the receipt and disposition of all controlled drugs.

(d) The facility must, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV (as identified in 21 U.S.C. 812).

(e) If the facility maintains a licensed pharmacy, the facility must comply with the regulations for controlled drugs (drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 *et seq.*, as implemented by 21 CFR Part 308).

§ 442.488 Labeling.

(a) Labeling of drugs and biologicals must—

(1) Be based on currently accepted professional principles and practices; and

(2) Include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(b) The facility must not retain—

(1) Outdated drugs; and

(2) Drug containers with worn, illegible, or missing labels.

(c) Drugs and biologicals packaged in containers designated for a particular client and that have been discontinued by the physician must not be available for administration.

§ 442.489 Laboratory services.

(a) For purposes for this section, "laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(b) If an ICF/MR that meets the requirements of this subpart operates its own laboratory, the laboratory must either—

(1) Be licensed or approved according to State law if it is located in a State that provides for the licensing or approval of laboratories; or

(2) Meet the requirements of paragraphs (c) through (f) of this section.

(c) The laboratory must meet the management requirements specified in § 405.1316 of this chapter.

(d) The facility must provide personnel to direct and conduct the laboratory services.

(1) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance and must be either—

(i) A pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services; or

(ii) A laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

(2) The laboratory director must provide adequate technical supervision of the laboratory services and assure that tests, examinations and procedures are properly performed, recorded and reported.

(3) The laboratory director must ensure that the staff—

(i) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(ii) Is sufficient in number for the scope and complexity of the services provided; and

(iii) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(4) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

(e) The laboratory must meet the proficiency testing requirements specified in § 405.1314(a) of this chapter.

(f) The laboratory must meet the quality control requirements specified in § 405.1317 of this chapter.

Physical Environment

§ 442.500 Client living environment.

(a) The facility must not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

(b) The facility must not segregate clients on the basis of their physical handicaps. It must integrate clients with ambulation deficits or who are deaf, blind, epileptic, etc., with others of comparable social and intellectual development.

§ 442.502 Client bedrooms.

(a) Bedrooms must—(1) Be rooms that have at least one outside wall;

(2) Be equipped with or located near toilet and bathing facilities;

(3) Accommodate no more than four clients unless granted a variance under paragraph (c) of this section;

(4) Measure at least 60 square feet per client in multiple client bedrooms and at least 80 square feet in single client bedrooms; and

(5) In all newly certified facilities, have walls that extend from floor to ceiling.

(b) If a bedroom is below grade level, it must have a window that is no more than 44 inches from the floor and must be usable as a second means of escape. If the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, the window must be no more than 36 inches above the ground.

(c) The survey agency may grant a variance from the limit of four clients per room only if a physician or psychologist who is a member of the interdisciplinary team and who is a qualified mental retardation professional—

(1) Certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours; and

(2) Documents the reasons why housing in a room of only four or fewer persons would not be feasible.

(d) The facility must provide each client with—

(1) A separate bed of proper size and height for the convenience of the client;

(2) A clean, comfortable, fire safe mattress;

(3) Bedding appropriate to the weather and climate; and

(4) Appropriate furniture, such as a chest of drawers, a table or desk, and an individual closet with clothes racks and shelves accessible to the client.

§ 442.504 Storage space in living units.

The facility must provide—(a) Space for equipment for daily out-of-bed activity for all clients who are not yet

mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to health and safety;

(b) Suitable storage space, accessible to clients, for personal possessions, such as TVs, radios, prosthetic equipment and clothing; and

(c) Adequate clean linen and dirty linen storage areas for each living unit.

§ 442.506 Client bathrooms.

The facility must—(a) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients;

(b) Provide for individual privacy in toilets, bathtubs, and showers unless specifically contraindicated by the client's physical, behavioral, or developmental needs; and

(c) In areas of the facility where clients who have not been trained to regulate water temperature are exposed to hot water, ensure that the temperature of the water does not exceed 110° Fahrenheit.

§ 442.508 Heating and ventilation in living units.

(a) Each client bedroom in the facility must have—(1) At least one window to the outside; and

(2) Direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.

(b) The facility must—(1) Maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and

(2) Ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.

§ 442.510 Floors in living units.

The facility must have—(a) Floors that have a resilient, nonabrasive, and slip-resistant surface; and

(b) Nonabrasive carpeting, if the living unit is carpeted and serves clients who crawl.

§ 442.512 Space and equipment in dining, health services, and program areas.

(a) The facility must provide sufficient space and equipment in dining, health services, and program areas (including adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility) to enable staff to provide clients with needed services as required by these standards and as identified in each client's IPP.

(b) The facility must furnish, maintain in good repair, and encourage the use of, dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by appropriate specialists or the interdisciplinary team as needed by the client.

Safety and Sanitation

§ 442.550 Emergency plan and procedures.

(a) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(b) The facility must communicate, periodically review, make the plan available, and provide training to the staff.

§ 442.552 Evacuation drills.

(a) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to—

(1) Ensure that all personnel on all shifts are trained to perform assigned tasks;

(2) Ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and

(3) Evaluate the effectiveness of emergency and disaster plans and procedures.

(b) The facility must—

(1) Actually evacuate clients who cannot cooperate in an evacuation, during at least one drill a year on each shift;

(2) Actually evacuate clients who can cooperate in an evacuation, during at least one drill each quarter on each shift;

(3) Make special provisions for the evacuation of the physically handicapped;

(4) File a report and evaluation on each evacuation drill; and

(5) Investigate all problems with evacuation drills, including accidents, and take corrective action.

(c) Facilities must meet the requirements of paragraphs (a) and (b) of this section for any live-in and relief staff they utilize.

§ 442.554 [Reserved]

§ 442.556 Paint.

The facility must— (a) Use lead-free paint inside the facility; and

(b) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.

§ 442.558 Food and nutrition services.

(a) The facility must provide each client with a nourishing, well-balanced diet including modified and specially-prescribed diets.

(b) A qualified dietitian and a physician must participate in decisions about modified and special diets, including modifications and changes to special and modified diets.

(c) Unless otherwise specified by medical needs the diet must be prepared in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

§ 442.560 Meal services.

(a) The facility must serve at least three meals daily, at regular times comparable to normal mealtimes in the community with—

(1) Not more than 14 hours between a substantial evening meal and breakfast of the following day; and

(2) Not less than 10 hours between breakfast and the evening meal of the same day.

(b) Food must be served—(1) In appropriate quanitity;

(2) At appropriate temperature;

(3) In a form consistent with the developmental level of the client; and

(4) With appropriate utensils.

(c) Food served and uneaten must be discarded.

§ 442.562 Menus.

Menus must—(a) Be prepared in advance;

(b) Provide a variety of foods at each meal;

(c) Be different for the same days of each week and adjusted for seasonal changes;

(d) Be kept on file for 30 days; and

(e) Include the average portion sizes for menu items.

§442.564 Dining areas and service.

The facility must—(a) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;

(b) Provide table service for all clients who can and will eat at a table, includng clients in wheelchairs;

(c) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client; and

(d) Supervise and staff dining rooms adequately to direct self-help dining procedures and to assure that each client receives enough food.

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program)

Dated: February 10, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: February 26, 1986.

Otis R. Bowen,

Secretary

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Part III

Environmental Protection Agency

40 CFR Part 271

State Hazardous Waste Programs; Procedures for Approving Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

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State Hazardous Waste Programs; Procedures for Approving Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today promulgating amendments to the procedures in 40 CFR 271.21 for processing revisions to State hazardous waste programs. The final rule is designed to streamline and improve the revision process for the States by eliminating the distinction between substantial and non-substantial revisions and making other changes to the approval procedures. The new process offers increased public participation by providing an opportunity to comment on all, rather than only substantial, program revisions.

DATES: These regulations shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on March 18, 1986. These regulations shall become effective on March 18, 1986.

FOR FURTHER INFORMATION CONTACT: The RCRA hotline, toll-free at (800) 424–9346 or in Washington, DC at (202) 382–3000, or Frank McAlister, State Programs Branch, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 382–2210.

SUPPLEMENTARY INFORMATION:

I. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 270–271. 40 CFR 271.21(b) requires States to submit their proposed program revisions to EPA for approval. The rule, prior to today's amendment, also specified two types of EPA approval procedures for program revisions.

For substantial program revisions, EPA was required to issue a public notice in the **Federal Register**, in the major newspapers in the State, and via mail to interested persons. The notice had to summarize the proposed revisions, provide for a comment period of at least 30 days, and provide for an opportunity for public hearing if there was significant public interest. After the comment period and a determination by the Agency that the proposed revisions were in compliance with the requirements of the Act, a notice of approval was published in the **Federal Register**. The same procedures did not apply to non-substantial program revisions. Rather, notice of approval of non-substantial program revisions could have been given simply by a letter from the Administrator to the State Governor or his designee.

EPA was concerned that the procedures for processing substantial program revisions might have been too time-consuming and resource-intensive for both the States and EPA. The time element is particularly critical; until a State receives authorization to implement a permitting requirement imposed by HSWA, the State cannot issue a RCRA permit to a facility within its borders. Instead, it must issue a joint permit with EPA whereby EPA adds the HSWA requirements that the State is not authorized to implement. We also were concerned that the public did not have an opportunity to comment on non-substantial program revisions.

To simplify and expedite the State revision process, EPA proposed on June 10, 1985 (50 FR 24362–24364) to streamline the procedures for approval of State hazardous waste program revisions. The proposal also sought to expand the opportunity for public involvement to include all State program revisions. EPA strongly encourages full public participation in all its State authorization decisions.

To accomplish these objectives, we proposed to eliminate the distinction between substantial and non-substantial program revisions and to substitute two alternative procedures for approving revisions: (1) Standard rulemaking, or (2) immediate final rulemaking. Under the first alternative, a proposed approval or disapproval would have been published in the **Federal Register** with at least a 30-day public comment period. EPA would have reviewed the public comments and responded to them in a final rule approving or disapproving the proposed revision. Under the second alternative, EPA would have published an immediate final rule in the **Federal Register** indicating that the State revision was approved or disapproved. EPA's decision would have taken effect 45 days after the date of publication unless EPA received a negative comment within the 30-day comment period. Under this proposed option, if EPA received a negative comment, EPA would have notified the State of the comment and published a new **Federal Register** action withdrawing the immediate final rule. The **Federal Register** publication would have identified the objection and proposed the approval or disapproval of the revision with a new comment period. The standard rulemaking alternative discussed above would have then been followed until a final decision was reached.

It should be noted that on January 6, 1986, EPA proposed additional changes to 40 CFR 271.21 (see 51 FR 496–504). The purpose of the January 6 proposal is to facilitate authorization of hazardous waste programs by defining *when* State program modifications must be completed. In contrast, today's final rule identifies *how* the State revisions will be processed. Regardless of the outcome of the January 6 proposal, today's rule will have a beneficial effect in streamlining State program approval procedures.

II. Provisions of the final rule

A. General

Although few comments were received on the proposal, all commenters supported the concept of streamlining the approval process for State program revisions. Indeed, most commenters suggested providing less opportunity for public comment than EPA proposed. As will be discussed in EPA's response to comments, those suggestions were rejected.

In analyzing the proposed rule, EPA realized there was no reason why receipt of adverse comments should automatically result in withdrawal of its decision. Normally EPA responds to public comments and does not provide a new comment period on comments that are received. We concluded that automatic withdrawal of the immediate

final rule and reproposal of EPA's decision would serve no practical purpose and only delay resolution of the issues raised by the comments. EPA was persuaded that a more efficient process could be devised. Thus, the final rule adopts the following approach.

The rule provides that if no adverse comments are received on EPA's decision to approve a State program revision, the decision will take effect 60 days after the date of publication. A second **Federal Register** notice would not be published. This aspect of the rule is the same as proposed, except that the proposal provided for an effective date 45 days after the date of publication. The Agency found it necessary to extend the effective date from 45 to 60 days since the proposal would have allowed an insufficient amount of time (a maximum of only 15 days after the close of the comment period) for the Agency to address adverse comments in accordance with the alternatives provided in the final rule, as discussed below. In addition, EPA wishes to clarify that the immediate final rule will be published in the final rule section of the **Federal Register** but will be cross-referenced in the proposed rule section of the **Federal Register** as well.

If adverse comments are received, a second **Federal Register** notice will be published before the time the immediate final rule takes effect. Unlike the proposal, however, the second notice may or may not withdraw the immediate final rule. If the Administrator disagrees with the public comments, he may publish a second **Federal Register** notice prior to the effective date of his decision which identifies the issues raised, responds to these comments and affirms that the immediate final rule will take effect as scheduled.

If the Administrator agrees with the public comments and decides to reverse his decision, he may do one of two things. He may publish a final rule before the effective date of his decision reflecting his changed position and explaining his reasoning. Alternatively, if he believes the change in position warrants a new round of public comment, he may withdraw the immediate final rule prior to its effective date and simultaneously propose his new decision.

Finally, if the comments raise issues that the Administrator cannot resolve before the effective date of the immediate final rule, he will withdraw the rule prior to its effective date. At a later date, he may publish a final rule which responds to comments and contains his decision or he may provide a new round of comment. This option assures that EPA will have whatever amount of time is necessary to consider all comments fully.

In short, the final rule provides the Administrator with several procedural options for making decisions on program revisions, including following standard rulemaking procedures. The common denominator of all the approaches is that no decision to approve or disapprove a State program will be made without an opportunity for public comment or before EPA has the opportunity to consider and respond to public comments. At the same time EPA retains the flexibility to choose the quickest and most effective approach for each situation, thereby reducing the administrative burdens and time delays for the States and EPA.

B. Use of Standard Rulemaking and Immediate Final Rulemaking

While either standard rulemaking or immediate final rulemaking procedures may be used to approve State program revisions, the Agency is more likely to use the standard rulemaking procedure in some circumstances. For example, if a State submitted a program revision for a large number of changes at the same time and the Agency expected the revision to generate public interest (e.g., there is a history of public comments on authorization decisions affecting the State), we would follow the standard rulemaking procedures. Further, EPA would normally use standard rulemaking procedures if the Agency were planning to disapprove a State program revision since more public comment would be likely.

On the other hand, the immediate final approach most likely would be used if the State has a history of little or no public interest in previous authorization decisions. For example, if no comments had been received on the State's initial application for final authorization or on recent program revisions, then subsequent revisions would ordinarily be processed using the immediate final rulemaking.

C. Elimination of Public Hearing Requirement

As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold a hearing.

III. Response to Comments

Several commentors suggested that comments on EPA's decision to approve or disapprove a State program revision which are inconsequential, insignificant or trivial may unnecessarily hinder the streamlining process and, therefore, EPA should only respond to significant comments. EPA does not believe that it is practical or desirable to rate the significance of public comments. Unless a comment is not germane to the program revision or is unsupported, EPA will respond to it in a second **Federal Register** notice. By "germane" EPA means that it would not publish a response where, for example, the comment concerned the State's permit program whereas the program revision concerned manifest requirements. Similarly, EPA would not publish a response where a person objected to EPA's decision but gave no reason.

One commentor suggested that EPA retain flexibility in how the Agency responds to adverse comments by allowing the option of either responding to the comments in the **Federal Register** or extending the public comment period. We agree that adverse comments should not result in automatic withdrawal of EPA's decision and have changed the rule as discussed above.

One commentor suggested that, where EPA withdraws an immediate final rule, the Agency should provide a specific response in the **Federal Register** which details what must be changed by the State, how the change must be made, and to what extent the change must be made. EPA agrees that, if time allows, such discussion would be appropriate; however, an overriding concern is the timely withdrawal of the rule (see section II A above). If not explained in the **Federal Register**, EPA will provide a detailed letter to the State which will be publicly available.

Several commentors, suggested that EPA retain the non-substantial revision process. We have rejected this comment because, as stated in the proposal, we believe that the public should be able to comment on all program revisions. Further, what EPA views as a non-substantial revision may be considered substantial by the public. Indeed, the concept of distinguishing between substantial and non-substantial program revisions is problematic. We also disagree with the comment that non-substantial revisions are essentially clerical revisions.

Two commentors opposed the use of standard rulemaking procedures for State authorization decisions. We believe it is important to retain the option of standard rulemaking procedures. We can think of no legal or practical reason for limiting EPA's discretion to use standard rulemaking procedures.

One commentor requested guidance on when EPA would use standard rulemaking procedures versus immediate final rules. Section II.*B* of the preamble provides discussion on this subject.

Two commentors opposed increasing the opportunity for public involvement in State program revisions. The Agency disagrees. We believe it is sound public policy to provide all parties the opportunity to review and comment on all EPA State authorization decisions, irrespective of whether or not one particular party may view a proposed revision as non-substantial or trivial, as discussed above. Further, EPA does not have to establish a basis for allowing public comment. Also, while we recognize the public has the opportunity to comment at State proceedings (e.g., at State hearings on the adoption of their regulations), the public does not have the opportunity to advise EPA at that time on whether each State program revision meets the Federal requirements for authorization.

IV. Regulatory Impact

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The regulation merely streamlines procedures for approving State RCRA program revisions. The Office of Management and Budget has exempted this rulemaking from Executive Order 12291.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a regulatory flexibility analysis. No regulatory flexibility analysis is required where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendments adopted here merely streamline the procedures for approving State hazardous waste program revisions and do not affect the compliance burdens of the regulated community.

Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in a proposed or final rule. Because there are no information collection activities created by this rulemaking, the requirements of the Paperwork Reduction Act do not apply.

Information collection requirements contained elsewhere in 40 CFR Part 271 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and have been assigned OMB control number 2000–0041.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: February 21, 1986.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 271 is revised as follows:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006, Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

2. In § 271.21, paragraphs (b)(2)–(4) are revised to read as follows:

* * * * *

(b) * * *

(2) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act. In approving or disapproving program revisions, the Administrator shall follow the procedures of paragraph (b)(3) or (4) of this section.

(3) The procedures for an immediate final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of his approval or disapproval of a State program revision:

(A) In the **Federal Register;**

(B) In enough of the largest newspapers in the State to attract Statewide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) The public notice shall summarize the State program revision, indicate whether EPA intends to approve or disapprove the revision and provide for an opportunity to comment for a period of 30 days.

(iii) Approval or disapproval of a State program revision shall become effective 60 days after the date of publication in the **Federal Register** in accordance with paragraph (b)(3)(i) of this section, unless an adverse comment pertaining to the State revision discussed in the notice is received by the end of the comment period. If an adverse comment is received the Administrator shall so notify the State and shall, within 60 days after the date of publication, publish in the **Federal Register** either:

(A) A withdrawal of the immediate final decision; or

(B) A notice containing a response to comments and which either affirms that the immediate final decision takes effect or reverses the decision.

(4) The procedures for proposed and final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of his proposed approval or disapproval of a State program revision:

(A) In the **Federal Register;**

(B) In enough of the largest newspapers in the State to attract Statewide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) The public notice shall summarize the State program revision, indicate whether EPA intends to approve or disapprove the revision and provide for an opportunity to comment for a period of at least 30 days.

(iii) A State program revision shall become effective when the Administrator's final approval is published in the **Federal Register.**

* * * * *

[FR Doc. 86–4610 Filed 3–3–86; 8:45 am]

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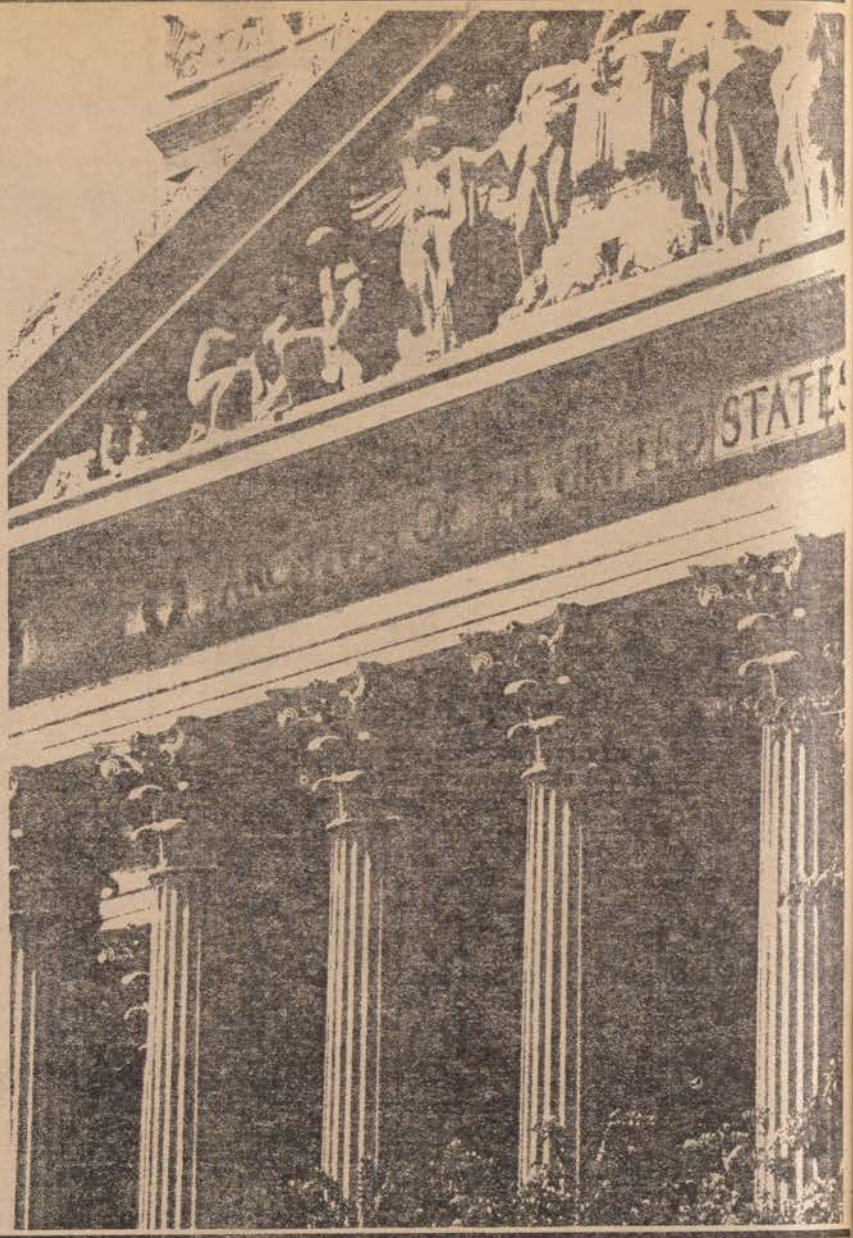

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